FREEDOM OF INFORMATION
AND
PRIVACY ACTS

SUBJECT: Roy M. Cohn

FILE NUMBER:62-97564

PART: 20 of 23

FEDERAL BUREAU OF INVESTIGATION

SUBJECT Roy M. Cohn

FILE NUMBER 62-97564

SECTION NUMBER 3

148 pages

[redacted] pages

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

GIR 2

TO : MR. TOLSON

DATE: June 28, 1957

FROM : L. B. NICHOLS

SUBJECT:

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-14-98 BY SP8 AG/Tolson
27,508

Tolson
Nichols
Boardman
Belmont
Mohr
Parsons
Rosen
Tamm
Trotter
Nease
Tele. Room
Holloman
[redacted]

Roy Cohn called 6-27-57 to advise that Neil Gallagher of the New Jersey Turnpike Commission represented him in connection with the return of an indictment charging the sale of obscene literature. Gallagher went before the Superior Court judge in Union County, New Jersey, Thursday afternoon and moved the dismissal of the indictment. The district attorney joined him in this recommendation and issued a public apology to Cohn.

b7C

cc-Mr. Boardman
Mr. Rosen
LBN:jmr
(4)

RECORDED - 80 62-92564-65

JUL 3 1957

EX-1

57 JUL 12 1957

UNRECORDED COPY FILED IN

GIR 11

September 27, 1957

RECORDED - 7 62-97564-66

Mr. Roy M. Cohn
20 Broadway
New York 6, New York

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-10-88 BY Sleazy Kat

Dear Roy:

Thank you for your letter of September 19, 1957.

I appreciate your interest in my article on the distribution of obscene literature. It was most thoughtful of you to write me in this regard.

With best wishes,

Sincerely,
Edgar

NOTE: Mr. Cohn is on the Special Correspondents' List, and we recently sent those on the list copies of the Director's article, "Let's Wipe Out the Schoolyard Sex Racket."

(3)

MAIL ROOM

SEP 27 1957
FBI
REC'D-READING ROOM
SEP 26 8 37 PM '57

52 OCT 7 1957

ROY M. COHN
29 BROADWAY
NEW YORK 6, N. Y.

WHITEHALL 4-2644

September 19, 1957

Hon. Edgar Hoover
United States Department of Justice
Washington 25, D. C.

Dear Edgar:

I was most interested in the reprint of your article in "This Week", about which I have heard much comment.

As a matter of fact, it will be most useful to me in a certain situation.

All good wishes.

Sincerely,

RMC:egl

RECORDED - 7

Roy (Cohn)

62-97564-6E

21 OCT 1 1957

Mr. Tolson
Mr. [illegible]
Mr. [illegible]
Mr. [illegible]
Mr. [illegible]
Miss Gandy

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-10-88 BY SP4 [illegible]

62

62

62

12-10-56

Mr. Tolson:
Mr. Nichols
Mr. Boardman
Mr. Belmont
Mr. Mason
Mr. Mohr
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Nease
Mr. Winterrowd
Tele. Room
Mr. Holloman
Miss Gandy

(1) With reference to the attached note from Roy Cohn inquiring whether there was any special reason why the New York Office "invariably ignores me when it comes to functions such as the Open House today and the Christmas parties, even though it does invite our mutual friends," I wish to advise that I talked to Roy and told him that the open house was intended for officials, the press, and those whom the New York Office has to deal with daily. This could not be allowed to get out of control and as a consequence, no former U. S. Attorney or former Assistant U. S. Attorneys were invited. I told him he had not been forgotten but that it would have put the New York Office in an awkward spot had they invited him and not invited other former Assistant U. S. Attorneys.

Roy apologized for sending me the note and stated to forget it.

Roy M. Cohn

Respectfully,

L. B. Nichols

LBN:nl
(2)

ENCLOSURE

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-10-88 BY SP2 AJT/tdc

I think Colen should be invited to such affairs - I certainly concur

EX-116

62-97564-67

RECORDED - 75

21 OCT 29 1957

Kelly
Edmund

UNRECORDED COPY FILED IN 62-97564-67

Memo from Roy M. Cohn

November 20, 1956

Dear Lou:

I was just wondering if there is any special reason why the New York office of the Bureau invariably ignores me when it comes to functions such as the Open House today and the Christmas parties, even though it does invite our mutual friends.

R.M.C.

EX. - 116

62-97564-67
1 Author

DO-6

OFFICE OF DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

Mr. Tolson
Mr. Boardman
Mr. Belmont
Mr. Mohr
Mr. Nease
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. Jones
Mr. Clayton
Tele. Room
Mr. Holloman
Miss Holmes
Miss Gandy

..... 19.....

From the desk of—

ROY M. COHN

To:

I thought you might be interested in this piece from the latest issue of the Texas Law Review.

62-9?:51-6

MAR 27 1958

REC- 89

R.M.C.

(Mr. Appel) 3-27-58 (Roy M. Cohn)

[redacted] b2

Bar Press, Inc., 54 Lafayette St., New York, WA 5-8482

ENCLOSURE

[Reprinted from the June, 1957, issue of the TEXAS LAW REVIEW]

Communist Trials and the American Tradition, The. By John Somerville. New York: Cameron Associates, Inc., 1956. Pp. 256. $3.50.

The Communist Trials and the American Tradition, Expert Testimony on Force and Violence, was written by John Somerville, Ph.D., "a professor of philosophy who testified for the Defense as a non-communist expert in three Smith Act trials."

Professor Somerville proclaims his objectivity and innocence by lack of association with the communist movement. His self-professed virtues, however, are not too seriously regarded by official communist publications, which contain repeated and friendly references to him and his writings (*i.e.*, The Worker, Sunday edition of the Daily Worker, May 2, 1948, carrying an advertisement of books "at your bookstore" "From the Soviet Cultural Scene," including Somerville's *Soviet Philosophy*, noted as "a valuable contribution to an understanding of the Soviet Union"; also Daily Worker, January 23, 1948, July 11, 12, 1956; The Worker, September 3, 1950; Political Affairs, June, 1947).

The particular work at hand is to this reviewer a labored piece of leftist propaganda clothed in the veneer of scholarship, based on a tortured interpretation of communist doctrine, and cleverly designed to appeal to the pseudo-intellectual.

Somerville's attack on communist prosecutions flows from this basic premise: There is logically, morally, and legally no justifiable foundation for the Government's case because communist doctrine does not teach forcible overthrow of the Government except under extreme circumstances affirmed by the Declaration of Independence.

Somerville's thesis developed around this premise is: (1) There is a "right of revolution" recognized in the American Declaration of Independence. (2) communist doctrine teaches this "right of revolution" but only in a "revolutionary situation" and it teaches there are possibilities of success by lawful and peaceful means. (3) Logically, legally, and morally basic to Smith Act prosecutions is this question: How is it possible to penalize the Communists for teaching that there is a right to use force and violence under certain revolutionary circumstances while at the same time we ourselves must teach and accept the Declaration of

* Professor of Law, Yale University.

Independence which affirms the right of revolutionary force and violence under the same circumstances?

Somerville's technique in presenting his thesis is to construct his text around selected excerpts from his testimony in the 1954 Philadelphia Smith Act conspiracy trial. It is amusing that while he believes this method is effective, it succeeds primarily in making the careful reader aware acutely that Somerville's testimony illustrates beyond a doubt that he is reluctant to give responsive answers on cross-examination and has his own tailor-made personal interpretation of Marxist-Leninist doctrine and terms.

Entitled, "The Issue of Force and Violence," Somerville's summary purports to prove that Lenin, and Stalin after him, emphasized that forcible revolution was justified only when two conditions occur simultaneously: (1) where the government represents some kind of tyranny which is either unwilling or unable to carry out the will of the people; and (2) where the majority is ready to support revolutionary action. Somerville argues that no communist leader has ever refuted the principles laid down by Marx and Engels, that wherever conditions are such that there are legal and peaceful means for the majority to gain its will, no forcible revolution should be entered upon.

Indeed, he would probably cite the sweetness and light statements of Nikita Khrushchev over the political bodies of Molotov, Malenkov, and Kaganovich as further reliable testimony of communist deference to victory by peaceful means—just as he would probably ignore the continuing communist policies of brutality and enslavement, and the ideological inconsistency of the new purges.

Somerville concludes that what Marxism-Leninism advocates is the right to use force "only under highly unusual conditions of tyrannical oppression wherein the majority were being denied the peaceful fulfillment of their inherent and inalienable rights—that is conditions wherein any believer in the Declaration of Independence would be logically bound to advocate the same thing."

Somerville laments the fact that the jury did not hear his statement in the form in which he had prepared it, for the court restricted him in his testimony. Apparently piqued that a court of law acting under rules of procedure and evidence could find no ground of relevancy or materiality for the introduction of some of his "expert" opinion, conclusions, and arguments, Somerville has written this book.

The *first fallacy* in Somerville's thesis is his premise that the Declaration of Independence—our country's "birth certificate" as he refers to it—has inherent in it the same advocacy or "right of revolution" as he attributes to Marxism-Leninism. On the contrary, the Declaration of Independence is a specially drawn document for a particular era of

history. Implicit in it is a dissolving of the political bands which had connected Great Britain with the American colonies. The document says so in so many words and then proceeds to list the crimes committed by the King of England against the patient sufferance of the American colonies. It is clear that the Declaration of Independence was drafted as a specific, detailed statement of political independence by colonies against a despotic king, 3000 miles away. It is equally clear that the words and meaning of the Declaration of Independence are a far cry from the doctrine of Marxism-Leninism which is a guide to action for the violent overthrow of the government of one's own country so that it may become a satellite in the international communist orbit.

A *second fallacy* is manifest in Somerville's discussion of "the right of revolution." Somerville equates the communist attitude toward the so-called right of revolution with the attitude of the general public toward the so-called right of revolution with the attitudes of the general public toward the right of self-defense. Somerville contends that a communist believing in the right of revolution only when two preconditions occur simultaneously (the government is unable or unwilling to function normally and there is majority support for revolution) is no more dangerous to society than an ordinary citizen who believes in the right of self-defense and will exercise that right when put in reasonable fear of his life. It is obvious that Somerville overlooks these basic distinctions between the two situations: (1) The exercise of the right of self-defense entails post-judicial review by the court of law acting under rules established prior to the invocation of that right, while the exercise of the communist "right of revolution" invokes no review save that of the Communist Party itself. (2) The exercise of the right of self-defense is fundamentally an individual act, an isolated specific instance, while the exercise of the communist "right of revolution" is a concerted act by a militant, highly disciplined organization aimed at destruction of the existing political and economic institutions of society. (3) If Somerville believes in the right of self-defense for the individual, does he deny such a right to a government? A government's first duty is to preserve its integrity and our Government has sought such preservation by the constitutional enactment of legislation and has enforced it under scrutiny of the courts to insure that there was due process of law. Somerville declares that Marxism-Leninism says forcible revolution is justified only when two conditions occur simultaneously: (1) inability or unwillingness of an existing government to carry out the will of the people; and (2) majority support for the revolution. In his analysis, Somerville recognizes in his first precondition the usual objective conditions. But in his second precondition, majority support for the revolution, Somerville has tortured

Marxist-Leninist theory cleverly to make it appear that a majority of the people must be for the revolutionary step *prior* to the revolution.

Somerville bases his theory of "revolution by the majority" on this quotation:

" 'In order to win the majority of the population to its side,' Lenin continues, 'the proletariat must first of all overthrow the bourgeoisie and seize state power and, *secondly*, it must introduce Soviet rule, smash to pieces the old state apparatus, and thus at one blow undermine the rule, authority and influence of the bourgeoisie and of the petty-bourgeois compromisers in the ranks of the non-proletarian toiling masses. Thirdly, the proletariat must *completely and finally destroy* the influence of the bourgeoisie and of the petty-bourgeois compromisers among the *majority* of the non-proletarian toiling masses by the *revolutionary* satisfaction of *their* economic needs *at the expense of* the exploiters.' "[1] (Emphasis in original.)

It is readily apparent in this quotation that Lenin is writing about *winning* the majority which is another thing from *having* the majority and it is compellingly clear according to Lenin that the majority is not won over to the side of the proletariat until after the bourgeois government is overthrown, state power is seized, the old state apparatus is smashed, and the influence on non-proletarian masses is destroyed. In other words, Lenin said we will *win the majority* of the population to our side *after* we, the vanguard minority, have successfully completed the proletarian revolution and successfully instituted the dictatorship of the proletariat! When the crucial question in the whole analysis is reached as to who determines when the proletariat has the support of the majority, Somerville concedes that this decision is made by the majority with the participation of the Communist Party and communist party leaders. Thus, the Communist Party in fact arrogates to itself the right to determine when and if there is majority support for the revolution.

The absurdity of Somerville's contention that majority support is a precondition of the revolutionary situation is shown by history because communists always come to power as a minority, and by Stalin who quoted Lenin:

" '*But we say:* Let the revolutionary proletariat first overthrow the bourgeoisie, break the yoke of capital, break up the bourgeois state apparatus. Then the victorious proletariat will speedily gain the sympathy and support of the majority of the toiling non-proletarian masses by satisfying their wants at the expense of the exploiters.' "[2] (Emphasis by Stalin.)

[1] XXIV LENIN, COLLECTED WORKS 641 (Russian ed.); STALIN, PROBLEMS OF LENINISM 21 (1934).

[2] XXVI LENIN, COLLECTED WORKS 647 (Russian ed.); STALIN, PROBLEMS OF LENINISM 20–21 (1934).

Somerville's pretense at objective scholarship is exposed by: (1) His preoccupation with the point that overt acts enumerated in the Smith Act indictment are not in and of themselves criminal acts. Inquiry of a freshman law student would have disclosed to him that there is no requirement that overt acts be criminal, all that is required is that they be done in pursuance of furtherance of the conspiracy. (2) His constant reiteration that because the Marxist-Leninist classics[8] in many instances were published prior to the formation of the Communist Party, United States of America, they must be related strictly to their period of history. If this is true, Somerville's basic premise of the right of revolution inherent in the Declaration of Independence must fall for Somerville is relying on a document much older than the Marxist-Leninist classics. While the age of the document has some importance, it is not as decisive as the testimony of witnesses on the acceptance and use of that document as a guide to current and future revolutionary action. (3) His light dismissal of the implication in government counsel's line of cross-examination that as a non-communist who has never attended communist meetings or schools, he is unqualified to testify to what the Communist Party and communist party leaders actually teach and advocate. Somerville decries this contention claiming that it is a disparagement of a great bulk of scholarship based on careful examination of books, documents and other printed material to determine ideas and teachings basic to a given movement. If, as he claims, Somerville is an objective scholar, his years of work with Marxism-Leninism and the communist movement should have taught him that this doctrine is a living philosophy, it is theory *and practice* and in comunist teachings the two are inseparable. Ironically, Somerville in an earlier book recognized this for that book was entitled, *Soviet Philosophy: A Study of Theory and Practice*. If Somerville is an objective scholar, he could not ignore the sworn testimony of ex-communists, many of whom served as state and national functionaries of the Communist Party, U.S.A., when they told the court and jury what the communist defendants in these trials taught and advocated. A real communist must be amused by Somerville's naivete.

And then, understanding Somerville's thesis is simplicity itself compared with some recent pronouncements of the Supreme Court of the United States on this and kindred subjects.

*Roy M. Cohn**

[8] The writings of Marx, Engels, Lenin, and Stalin upon which Marxism-Leninism is based.

* Member of the New York Bar; Professor of Law, New York Law School.

[Editorial Note]. While an assistant United States attorney for the southern district of New York, Mr. Cohn assisted in the legal preparation of the first Smith Act trial (U.S. v. Dennis, et al.). He subsequently was prosecutor in the second Smith Act trial

March 21, 1958

REC- 89 62-97564-68

EX. - 126

Mr. Roy M. Cohn
29 Broadway
New York 6, New York

Dear Roy: COHN

It was good of you to send me your review of Somerville's book from the "Texas Law Review." I think you have succeeded not only in destroying Somerville's thesis completely, but in providing a very concise analysis of communist doctrine on revolution.

Thank you for bringing this article to my attention.

With best wishes,

Sincerely,

Edgar

NOTE: Cohn is on the Special Correspondents' List. A reprint of his review of "The Communist Trials and the American Tradition" by John Somerville, appearing in the June, 1957, issue of the "Texas Law Review" was sent by Cohn for the Director's attention.

[redacted]

(3) b7C

Tolson
Boardman
Belmont
Mohr
Nease
Parsons
Rosen
Tamm
Trotter
Clayton
Tele. Room
Holloman
Gandy

F992

61 APR 2 1958

MAIL ROOM

Mr. Tolson
Mr. Belmont
Mr. Mohr
Mr. Nease
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. W.C. Sullivan
Tele. Room
Mr. Holloman
Miss Gandy

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION
201 East 69th Street
New York 21, New York

In Reply, Please Refer to File No.

October 22, 1958

J. Edgar Hoover
Director
Federal Bureau of Investigation
Washington, D. C.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-10-84 BY SP2 [illegible]

3-1

Dear Mr. Hoover:

[redacted] that he attended a meeting on the night of October 20, 1958, of the Crusade for America in a hall at Garden City, Long Island. The meeting was attended by approximately 2,500 people.

During this meeting Roy Cohn made a speech in which he stated, among other things, that the article criticizing the FBI in the current issue of "The Nation" was the beginning of a smear campaign directed against one man and one agency and that it was taking on the lines of the previous anti-McCarthy campaign. Cohn stated there would be a lot more articles written along the lines of Cook's article about the FBI in "The Nation". Cohn also stated that in 1940, when Russia was our alleged ally, Mr. Hoover took a long chance in investigating the Communist apparatus that was in operation at that time and that this was a step in the right direction and it did a lot towards making the Bureau's investigation of Communist activities the success that it now enjoys. Cohn stated that in order to combat this situation people should not buy "The Nation" and they should also refrain from buying the "New York Post". He urged those present to take an active part in combatting

62-93564-69

[redacted]

b7C

[redacted]

cc FBI

this situation by writing letters to Mr. Hoover indicating that they have the greatest confidence in what he is doing and how he is doing it.

It was felt that you may wish to have this information in order that you could direct a letter to Roy Cohn if you so desire.

From a general standpoint, the Crusade for America, according to [redacted] is headed up by Daniel C. Buckley, 51 Front Street, Rockville Centre, Long Island, formerly an Assistant Counsel on the McCarthy Committee. Buckley was the other speaker and [redacted] advised that his talk was general in nature although he urged those present not to vote for Rockefeller in the coming New York gubernatorial election because if Rockefeller won, he would be a threat to Vice President Nixon in the coming Presidential campaign. He allegedly asked them to vote for Harriman who because of his age, if he won the election, would not be a threat in the next Presidential campaign.

Sincerely,

H. G. FOSTER
Special Agent in Charge

October 24, 1958

Mr. Roy M. Cohn
29 Broadway
New York 6, New York

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-10-88 BY [signature]

Dear Roy:

I have learned of your talk on October 20, 1958, at the meeting of the Crusade for America, and I want to assure you that we in the FBI are deeply grateful for your support in the face of the scurrilous smear attack by "The Nation."

From what I know of your remarks, you recognize the article for what it is. I think it is quite obvious that Cook's alleged research was completely biased and nonobjective. The reference in the introduction to the Lowenthal book indicates this right from the start.

As you can probably guess, this is not the first time that Cook has criticized us. "The Nation" on September 21, 1957, devoted forty pages to an article by Cook entitled "Hiss: Perspectives on the Strangest Case of Our Time." This was a slanted review and implied that the FBI had been guilty of "framing" Alger Hiss. Shortly thereafter, Cook expanded this material into book form under the title, "The Unfinished Story of Alger Hiss." Then on December 28, 1957, "The Nation" carried another story by Cook captioned "The Remington Tragedy: a Study of Injustice." Here again we were criticized and the piece was sympathetic to Remington. On January 25 of this year, this magazine carried another item by Cook critical of Boris Morros. This article was entitled "Boris Morros: Hero of a Myth."

This attack by "The Nation," as you indicated in your speech, is merely the first step in a concerted effort to discredit the FBI by some of the left-wing apologists who have been sniping at us off and on for years. You probably know that [redacted] of the "New York Post" is behind an

1 - New York
Reurlet 10-22-58.

1 - Mr. Nease

[redacted]

Belmont
Mohr
Nease
Parsons
Rosen
Tamm
Trotter
W.C. Sullivan
Tele. Room
Holloman
Gandy

MAIL ROOM TELETYPE UNIT

Mr. Roy M. Cohn

extensive campaign against us. The Post is planning a series of syndicated articles on the FBI and my administration of it. As an illustration of the extent to which they are going, the other day one of their representatives contacted a former Bureau Agent in Paris who had been dismissed from the service. I have also learned that Post reporters are making widespread efforts in various parts of the country to locate and contact possibly disgruntled former employees, obviously with a hope of digging up some "dirt." It is readily apparent that this is a well-financed smear attempt and that they are sparing no expense in their attempt to discredit the FBI and me personally. [redacted] and his wife have admitted membership at one time in the Young Communist League and they have been active in other similar groups.

The Emergency Civil Liberties crowd is also apparently getting into the act, as I have been reliably advised that their magazine "Rights" is to come out shortly with a special issue on the topic, "The FBI and Your Freedom." There is no doubt, of course, but that it will be highly critical. The announced intention of the Emergency Civil Liberties Committee, rather far afield from the protection of civil rights, has been to abolish the House Committee on Un-American Activities and other Congressional investigating committees and to discredit the FBI.

Again, let me thank you for your stout support and for coming to our defense so swiftly and forcefully. You, of course, have very excellent contacts in a great many places, and if you should pick up some rumblings regarding this campaign, I know that it goes without saying you will seize any opportunity to keep the whole matter in proper perspective for the American people.

With best regards,

Sincerely,

Edgar

EX. - 124

62-97564-69

October 28, 1958

REC- 65

b7C

[redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-10-85 BY SP8 tj/tk

Dear [redacted]

Your letter of October 22, 1958, has been received, and I certainly appreciate your thoughtfulness in writing.

It was indeed good of you to let me know that we have your confidence and support, and I assure you this is truly encouraging. We, of course, will continue to carry out our responsibilities to the best of our abilities regardless of the smear campaign which is being directed against us. In this regard, I am enclosing a copy of a statement made today by Preston J. Moore, National Commander of The American Legion.

Sincerely yours,

J. Edgar Hoover

Enclosure

NOTE: [redacted] is not identifiable in Bufiles. Roy Cohn spoke on 10-20-58 at the Crusade For America meeting during which he told of the current smear campaign against the Bureau and urged those attending the meeting to write to the Director expressing confidence in the FBI.

b7C

Tolson
Belmont
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Nease
Parsons
Rosen
Tamm
Trotter
W.C. Sullivan
Tele. Room
Holloman
Gandy

[redacted]

(3)

MAIL ROOM ☐ TELETYPE UNIT ☐

57 NOV 4 1958

MAILED 31
OCT 29 1958
COMM-FBI

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F B I
OCT 28 5 40 PM '58

[redacted]

b7C

October 22, 1958

Mr. J. Edgar Hoover
Federal Bureau of Investigation
Washington, D. C.

Dear Mr. Hoover:

Several of my friends and I attended a meeting of the Crusade For America two evenings ago, at which Roy M. Cohn was the guest speaker.

In his speech Mr. Cohn mentioned that the F.B.I. was now undergoing an investigation. At first we thought he must be joking, as this is by far the most ridiculous thing we ever heard. But apparently he was serious, although I have read nothing thus far in the papers regarding such an investigation.

Mr. Hoover, I am writing this to assure you that we and thousands of other Americans are behind you 100%, especially if there is anything to this farce. You and the F.B.I. have always been the foremost weapon against Communism. Naturally, this latest investigation is Communist inspired; we are fully aware of their tactics.

You have our sincerest hope that this hoax will not be detrimental in any way to you or your department, and also our deepest thanks for what you have done to protect our country from what is assuredly the most dangerous conspiracy in its history.

Yours sincerely,

[redacted]

b7C

P.S.- It's too bad you're not President.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-10-88 BY SP2 RJT/tab

EX. - 124
REC- 65

62-92564-69

EX-[illegible]

OCT 23 1958

[redacted]

DO-6

OFFICE OF DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

Mr. Tolson
Mr. Belmont
Mr. [redacted]
Mr. Mohr
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. Jones
Mr. Sullivan
Tele. Room
Mr. [redacted]
Miss [redacted]
Miss [redacted]

From the desk of

ROY COHN

DATE

Dear Edgar:

I thought the enclosed might interest you.

R.M.C.

Roy M. Cohn

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-10-84 BY SP8AT/Sale

[redacted]

62-92564-70

3 NOV 17 1958

ANTI-RED STUDIES SEEN SUSPENDED

Congressional Probes Are Near Standstill, Roy Cohn Warns

While Congressional studies of subversion, treason and Communism have almost stopped, an investigation of the F.B.I. has been started by the "liberals," Roy M. Cohn warned at the annual Fall meeting of the Crusade for America in the Garden City Hotel Monday.

"Except for an occasional flurry, Congressional investigations are practically at a standstill," he told almost 3,000 people at the meeting, at which Daniel G. Buckley, crusade president, presided.

Smear Campaign Against F.B.I.

The investigation of the F.B.I. and J. Edgar Hoover, Mr. Cohn said, "is being launched by the "Nation" magazine and other elements of the left wing. They have commenced an unprecedented smear campaign against the F.B.I. and Mr. Hoover, and we know why.

"The F.B.I., under Mr. Hoover's guidance, has been the most effective governmental force in the world in the fight against the atheistic Communistic conspiracy. The information this organization has collected over the years has made possible the prosecution of enemies of this Country, and the F.B.I. has, to my personal knowledge, been operated with fairness and justice for all in a manner unrivaled by any other law-enforcement agency."

The most amazing feature of the smear campaign in the "Nation," Mr. Cohn asserted, "is the fact its self-styled crusade for justice comes within months after its own counsel was convicted by a Federal Court jury for obstruction of justice and perjury in connection with the Harvey Matusow investigation. The 'Nation,' like left wingers and Communists, has good reason to dislike the F.B.I., which has defended American freedom."

Eleventh Hour at Hand

"With the atheistic Communistic conspiracy in possession of a large part of the earth's surface and population, with the death-dealing atomic, hydrogen, and missile weapons in its hands to bring about destruction of the remainder of the earth's surface, Mr. Cohn continued, "we have truly reached the 11th hour."

"We cannot look to Washington for leadership. Too many people there are politicians rather than patriots. The days of the unselfish courage and national devotion of men like Senator McCarthy are not with us. Those like Senator Jenner have packed up and gone home heartbroken.

"This fight has passed to the hands of the American people. They must sustain it by active participation in church, public and civic groups. They must sustain it by writing letters to sponsors and networks which offer left-wing and Communist commentators and programs. They must sustain it by writing to Congressmen and public officials and demanding that they take the just and honorable course.

"There are many of us who feel this fight is largely due to our selfishness and negligence, is almost lost. But win or lose, it is a fight we must make because it is a fight for right to believe in God and preservation of the United States of America —and without those, life itself would not be worth while."

Public Opinion on Quemoy

The former counsel of Senator McCarthy's investigation committee said, "I only wish that those in the State Department who made a big fuss about the receipt of 5,000 letters from all over the Nation protesting against our defense of Nationalist China and Quemoy and Matsu, could have been here tonight.

"They would have seen close to that number of people, not from throughout the nation, but from one small district of the Nation, assembled here in this hall in the aisles and standing up in the corridors and rooms outside. And the people here tonight, I know, believe in the defense of Free China and of any other part of the free world which has not as yet fallen into the hands of the atheistic Communist conspiracy.

"We are told that the space age has made this one world. We are further told that this should cause us to change our thinking and our view of the position of the United States. Far from bringing about a change in thinking, a closer look at the world which has become one, has reenforced us in our belief that it all stems from the Fatherhood of God and that by comparison with other places, the greatness of the United States stands out more than ever before.

Criticism of High Court

"Those who tell us not to defend Free China are the same people who 15 years ago told us that the Chinese Communists were merely 'agrarian reformers.' These mere 'agrarian reformers' have tortured and killed American servicemen, newspapermen and Catholic priests. They have plotted with their ally in Marxism-Leninism, the Soviet Union, in the contemplated overthrow of the United States and every other free nation of the world. The miserable advice these same people gave us 15 years ago should be sufficient to bring about the rejection of their vice now."

When the Supreme Court things the "liberals" didn't 20 years ago, he said, they w not content with restricting redefining the jurisdiction of Supreme Court; they wanted replace the nine justices.

"But today, when the tat are reversed and the Supre Court has come out with a ser of opinions which damage Constitution and free insti tion of the United States, we told by these same people th we should not dare to critic the Supreme Court or take ste to protect the function of o Congress.

"The fact is that the Chi Justices of 36 out of 48 stat have stated this Summer th the Supreme Court does n write opinions but tries to mai policy—that it is not judici but has attempted to preem the legislative function."

In the course of a questic and answer period, Mr. Coh recommended reading THE TAI LET, "National Review" and th writings and broadcasts of me such as Georg Sokolsky, Davi Lawrence and Fulton Lewis musts in keeping informed o the fight against Communism.

(3) 62-97564-20
Enclosure

62-97564-70

November 4, 1958

REC-108

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Mr. Roy M. Cohn
29 Broadway
New York 6, New York

Dear Roy:

Many thanks for sending down the clipping concerning your address at the recent meeting of "Crusade for America." I think you know full well the extent of my deep appreciation for all that you are doing for us.

Sincerely,

Edgar

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NOTE: The clipping forwarded by Cohn apparently came from the "New York Times" though he did not identify the source.

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October 12, 1959

REC-7 62-97564-71

(1)

FX .

Mr. Roy M. Cohn
Saxe, Bacon and O'Shea
20 Exchange Place
New York 5, New York

Dear Roy:

Many thanks for your letter of October 7, 1959, with the enclosed Law Review article. It was indeed thoughtful of you to send me a copy of this, and I found it most interesting.

Sincerely,

Edgar

NOTE: Roy Cohn is on the Special Correspondent's List. The enclosed Law Review article concerns the Supreme Court with regard to unnecessarily limiting national and state security efforts in many cases. In this article Cohn concludes that the present members of the Supreme Court have assumed an unrealistic attitude toward the Communist Party in the United States and have ignored the warnings of former Communist Party members, congressional committees and other governmental agencies, including the FBI. They are particularly disturbed by the Court's disregard of precedent and the frequency with which the Court has overturned previous decisions leading to instability and confusion in the law. They indicate that the remedy for these poor decisions lies not in drastic curtailment of the Court's jurisdiction, but rather in enacting appropriate legislation to cure those statutory deficiencies which the Court maintains exists.

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MAIL ROOM TELETYPE UNIT

FEDERAL BUREAU OF INVESTIGATION

Room 5744 1019, 1959

TO:

___Director
___Mr. Belmont
~~___Mr. DeLoach~~
___Mr. Mohr
___Mr. Rosen
___Mr. Tamm
___Mr. McGuire
___Mr. Trotter
___Mr. Parsons
___Mr. Clayton
___Mr. Holloman
___Miss Gandy
___Personnel Files Section
___Records Branch
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Clyde Tolson

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Mr. Tolson
Mr. Belmont
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Mr. McGuire
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Mr. Trotter
Mr. W. C. Sullivan
Tele. Room
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October 7, 1959

Hon. J. Edgar Hoover
Federal Bureau of Investigation
Washington 25, D. C.

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b7C

Dear Edgar:-

Enclosed is a copy of the Law Review article written by Tom Bolan and me on the Supreme Court which you may find of interest.

Sincerely yours,

Roy M. Cohn

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Encl.

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The Supreme Court and the A.B.A. Report and Resolutions

By

ROY M. COHN
AND
THOMAS A. BOLAN

Reprinted from the
FORDHAM LAW REVIEW
Summer, 1959

THE SUPREME COURT AND THE A.B.A. REPORT AND RESOLUTIONS

*ROY M. COHN**

*THOMAS A. BOLAN**

INTRODUCTION

ON February 24, 1959, the House of Delegates of the American Bar Association, acting on the report and recommendations of its Special Committee on Communist Tactics, Strategy and Objectives, passed five resolutions dealing directly or indirectly with decisions of the United States Supreme Court on matters of internal security.[1]

In its report, the Special Committee stated that the Supreme Court, in many cases, had unnecessarily limited national and state security efforts, thus encouraging increased communist activity in the United States; that the "paralysis of our internal security grows largely from construction and interpretation centering around technicalities emanating from our judicial process . . .";[2] and that the majority of the Supreme Court has failed "to recognize the underground forces that are at work and to appreciate how these decisions affect our internal security."[3] The Committee summarized twenty-four cases "criticized by the public, public officials, and the bar in varying degrees as illustrative of how our security has been weakened . . . ."[4] Its report also contained a detailed analysis of communist tactics and strategy, stating that it is a fallacy to assume that communist power in the United States is diminishing because the party is dwindling in numbers, and concluded that the "danger and the menace of communism are worse than ever."[5]

Using its report as a basis, the Committee submitted to the House of Delegates[6] five resolutions which were adopted by the House with but a few minor changes. Under its procedures, the House of Delegates did not and could not have approved the report itself.[7]

---

* Members of the New York Bar.

1. For the full text of the resolutions and the debate preceding their adoption see 45 A.B.A.J. 406-10 (1959) [hereinafter cited as A.B.A. Resolutions]. The full text of the report may be found in 105 Cong. Rec. A1470-81 (daily ed. Feb. 25, 1959) [hereinafter cited as A.B.A. Report].

2. A.B.A. Report at A1472.

3. Id. at A1473.

4. Ibid.

5. Id. at A1480.

6. The Board of Governors, in transmitting to the House of Delegates its approval of these resolutions, issued a statement saying "that its [the Board of Governors] action did not in any way intend to indicate censure of the Supreme Court of the United States'" N.Y. Times, Feb. 22, 1959, p. 1, col. 3.

7. In approving the resolutions, the Board of Governors said: "'The recommendation

In the early 1920's, the Court was taken to task for its alleged suppression of freedom of speech.[44] During this same period, labor leaders, radicals, and sociologists challenged the right of the Court to render any decision regarding the validity of a federal statute.[45] In 1924, Norman Thomas advocated curtailment of the power of the Supreme Court because it had declared anti-injunction legislation unconstitutional.[46] That same year, the Supreme Court Justices were being accused by liberals of invoking "their own social and economic views as against the social and economic views of the majority of Congress."[47]

In 1930, Senator William E. Borah of Idaho alleged that the Supreme Court had become, under the fourteenth amendment, the "'economic dictator in the United States.'"[48] while Louis Boudin was writing in 1932 that *"there is a steady course of absorption of power by the United States Supreme Court at the expense of all other departments of government and of the people themselves."*[49]

In May 1935, the Attorney General of the United States wrote President Roosevelt that "apparently there are at least four justices who are against any attempt to use the power of the Federal Government for bettering general conditions, except within the narrowest limitations."[50] President Roosevelt, in turn, sarcastically referred to the Court as belonging in "the horse-and-buggy days."[51]

Louis Boudin again wrote in 1937 that the Supreme Court was "a law unto itself" and had "diminished our civil rights by giving to the Constitution a narrow interpretation—often flying in the face of established legal principles and the clear language of the document."[52] He added that the Court had deprived remaining civil rights of any real content by preventing the federal government from protecting them.[53]

Certainly, the criticism of the Supreme Court as found in the report of the A.B.A. Special Committee is mild in comparison to some of these pronouncements by noted liberals. Not only is the criticism much milder, but the remedy proposed by the A.B.A., amendatory legislation, is much less drastic than some of the measures championed by liberals in the past. For example, Senator La Follette proposed a constitutional

44. See Warren, op. cit. supra note 29, at 270.
45. Id. at 129.
46. Id. at 132 n.1.
47. The Red Demon of Judicial Reform, New Republic, Oct. 1, 1924, p. 110
48. Quoted in the N.Y. Times, Feb. 12, 1930, p. 18, col. 3.
49. 2 Boudin, op. cit. supra note 28 at 548-59.
50. Milton, The Use of Presidential Power, 1789-1943, at 277 (1944)
51. Taylor, Grand Inquest: The Story of Congressional Investigations 68 (1955)
52. Boudin, The Supreme Court and Civil Rights, Science & Soc'y 274, 309 (Spring 1937).
53. Id. at 309

amendment providing that a federal statute held unconstitutional by the Court and enacted by Congress a second time by at least a two-thirds majority could not thereafter be held unconstitutional.[54] When Supreme Court decisions met with President Franklin D. Roosevelt's disapproval, he unsuccessfully attempted to "pack the Court" in 1937 by proposing legislation which would permit him to nominate an additional Justice for each Justice who did not retire at the age of seventy, the Court not to exceed fifteen members.[55] Six of the Justices then on the Court were over seventy.

In the light of this history, it is clear that present liberal support of the Supreme Court is due mainly to the latter's issuance of favorable pronouncements.[56] When decisions were objectionable, however, these same elements were quick to criticize the Court and propose extreme remedies to curtail its influence. Mr. Justice Black, when a Senator, supported President Roosevelt's Court-packing plan.[57] Indeed, the history of criticism aimed at the Court shows that "those who have attacked the Court for a decision to-day have often been the very persons to praise it for another decision to-morrow."[58] The Supreme Court has been denounced so frequently that it is almost true that "one ordinarily need go no further than his favorite historical character to find some juicy tidbit of invective."[59] History, therefore, reveals nothing that is unusual in the manner or tone of the A.B.A. criticism.

C. *The Justices and Criticism of the Court*

Members of the Supreme Court have often declared that criticism of the Court is beneficial and not harmful.[60] As Mr. Justice Brewer stated in 1898:

> It is a mistake to suppose that the Supreme Court is either honored or helped by being spoken of as beyond criticism. On the contrary, the life and character of its justices should be the objects of constant watchfulness by all, and its judgments subjected to the freest criticism. . . . True, many criticisms may be, like their author, devoid of good taste, but better all sorts of criticism than no criticism at all.[61]

54. Warren, Congress, the Constitution and the Supreme Court 138 (1925).
55. Milton, op. cit. supra note 50, at 278.
56. See, e.g., Westin, When the Public Judges the Court, N.Y. Times, May 31, 1959, § 6 (Magazine), p. 16.
57. Palmer, The Court and the Popular Will: What Is Their True Function in Our Legal System?, 35 A.B.A.J. 101, 104 n.18 (1949).
58. Warren, op. cit. supra note 54, at 270-71.
59. Dunsford & Childress, Attacks on the Supreme Court, 4 Catholic Law. 57 (1958).
60. Chief Justice Warren of the present Court apparently does not subscribe to this view, it having been reported that he has resigned from the American Bar Association because of its adverse criticism of the Court. See N.Y. Herald Tribune, April 23, 1959, p. 8, cols. 1-3; see also Malone, The President's Page, 45 A.B.A.J. 317, 324 (1959).
61. 15 Nat. Corp. Rep. 848, 849 (1898).

In *Bridges v. California*,[62] Mr. Justice Black maintained that to assume that respect for the judiciary could be obtained by insulating judges from published criticism was an erroneous appraisal of the character of American public opinion.[63] He observed that "it is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions."[64] Mr. Justice Frankfurter, dissenting in the same case, pointed out that because of their judicial office, judges may become oblivious of their common human frailties and fallibilities, and have, at times, even been martinets on the bench.[65] "Therefore," he claimed, "judges must be kept mindful of their limitations and of their ultimate public responsibility by a vigorous stream of criticism expressed with candor however blunt."[66]

Along the same lines, Mr. Justice Stone denied that criticism of judicial action bespoke lack of respect for the courts. On the contrary, he urged that "where the courts deal, as ours do, with great public questions, the only protection against unwise decisions, and even judicial usurpation, is careful scrutiny of their action and fearless comment on it."[67] Mr. Justice Jackson wrote that "acceptance of criticism by the profession" is one of the most important criteria in determining a decision's "real weight in subsequent cases."[68]

Needless to say, some of the most vigorous attacks on Supreme Court decisions have come from dissenting members of the Court itself, "whose right to criticize the actions of the judicial department are no less and no greater than that of the humblest American citizen."[69] A few quotations from the opinions of some recent members of the Court will suffice to show that the Justices have frequently shown little or no restraint in criticizing their own colleagues.[70]

Mr. Justice Frankfurter has referred to "the careful ambiguities and silences of the majority opinion";[71] depicted one decision as "purely destructive legislation";[72] and with respect to another claimed that "the Court's opinion has only its own reasoning to support it."[73] Mr. Justice

62. 314 U.S. 252 (1941).
63. Id. at 270.
64. Ibid.
65. Id. at 289.
66. Ibid.
67. Quoted in Mason, The Supreme Court From Taft to Warren 205 (1958).
68. Jackson, The Supreme Court in the American System 13 (1955).
69. 45 A.B.A.J. 367 (1959) (editorial).
70. See Palmer, Dissents and Overrulings: A Study of Developments in the Supreme Court, 34 A.B.A.J. 554 (1948).
71. Bridges v. California, 314 U.S. [illegible] (1941).
72. Cloverleaf Butter Co. v. Patterson, 315 U.S. 148, 179 (1942).
73. Davis v. United States, 328 U.S. 582, 603 (1946).

Black once accused the majority of "judicial amendment" of the Constitution.[74] In another case, he saw the majority acting as a "'super-legislature'"[75] ignoring a "century and a half of constitutional history and government."[76] On another occasion, he accused the Court of avoiding "orderly analysis and discussion,"[77] wresting quotations "from their setting and context,"[78] and concluded that "the general principle that nothing added to nothing will not add up to something holds true in this case."[79] Mr. Justice Black characterized a Frankfurter dissent as resting on "the writer's personal views on 'morals' and 'ethics.'"[80] Black charged that for "judges to rest their interpretation of statutes on nothing but their own conception of 'morals' and 'ethics' is, to say the least, dangerous business."[81]

Mr. Justice Douglas once declared that a majority opinion was "written on a hypothetical state of facts, not on the facts presented by the record,"[82] and referred to a part of the opinion as "neither good sense nor good law. Such a result makes the way easy for the traitor, does violence to the Constitution and makes justice truly blind."[83] Mr. Justice Clark has complained that the Court "disregards its plain responsibilities" and avoids constitutional issues by use of "a pretext";[84] and in another case said that the Court "should not be 'that blind' court . . . that does not see what '[a]ll others can see and understand. . . .'"[85]

Criticism of the Supreme Court by its own members has not always been confined to official opinions. In one of his recent works, Mr. Justice Douglas alleges that the Supreme Court at times "has even been swept by hysteria, becoming little more than an executor for those who preached intolerance."[86] He adds that the greatest claim to judicial supremacy made by the Supreme Court was on behalf of "vested interests that were callous to human rights."[87]

74. Connecticut Gen. Life Ins. Co. v. Johnson, 303 U.S. 77, 90 (1938).
75. Southern Pac. Co. v. Arizona, 325 U.S. 761, 788 (1945). Mr. Justice Brandeis was the first member of the Court to refer to his brethren as a "super-legislature." Burns Baking Co. v. Bryan, 264 U.S. 504, 534 (1924) (dissent).
76. 325 U.S. at 789.
77. Associated Press v. United States, 326 U.S. 1, 33 (1945).
78. Ibid.
79. Ibid.
80. Mercoid Corp. v. Mid-Continent Inv. Co., 320 U.S. 661, 673 (1944).
81. Ibid.
82. Cramer v. United States, 325 U.S. 1, 48 (1945).
83. Id. at 67.
84. Communist Party v. Subversive Activities Control Bd., 351 U.S. 115, 127-28 (1956).
85. Greene v. McElroy, 79 Sup. Ct. 1400, 1427 (1959) (dissent).
86. Douglas, An Almanac of Liberty 104 (1954).
87. Ibid.

Mr. Justice Jackson became involved in a public feud[88] with Mr. Justice Black over the latter's participation in *Jewell Ridge Coal Corp. v. Local 6167, UMW*.[89] Jackson also charged that the 1937 Court was guilty of "usurpation," "unwarranted interferences with lawful government activities," and "tortured construction of the Constitution."[90]

As Mr. Justice Frankfurter has said: "Judges as persons, or courts as institutions, are entitled to no greater immunity from criticism than other persons or institutions."[91] The Court should not be any more above criticism than are other branches of the Government. Men entrusted with the responsibility of public office "incur the possibility of criticism and unfavorable review of their public and official actions."[92] As one writer has aptly commented:

> An institution is only as good as the men who manage it and in many countries, the instruments of justice and right have been corrupted if not by money then by the corrosive activities of incorrectly oriented men . . . . In a country of free men, no institution of government must never be criticized.[93]

II. Assertion by the Court of Its Personal Views and Disregard of Stare Decisis

There are those who maintain that the present Supreme Court is preserving the civil liberties guaranteed by our Constitution. Such statements usually mean nothing more than that the individuals making them happen to agree with the Supreme Court's notion of what constitutes these "civil liberties." Constitutional "guarantees" do not enter into the picture at all, because the language of the Constitution necessarily yields to the views of a majority of five members of the Supreme Court. A man who is today "guaranteed" by the Constitution against going to prison may wind up in jail tomorrow if five judges believe that is where he belongs.

Nothing is more evident from a study of Supreme Court decisions than the truth of Charles Evans Hughes' statement that "the Constitution is what the judges say it is."[94] Many others learned in the law have readily accepted this principle.[95] Mr. Justice Harlan has explained: "If

88. Palmer, supra note 70, at 555.

89. 325 U.S. 161 (1945).

90. Jackson, The Struggle for Judicial Supremacy 189 (1941).

91. Bridges v. California, 314 U.S. 252, 289 (1941).

92. 45 A.B.A.J. 262 (1959) (editorial).

93. Sokolsky, The Bar's Report On Reds and Court, N.Y. Journal-American, March 7, 1959, p. 20, cols. 7-8.

94. Charles Evans Hughes, [illegible] and Papers 185, 86 (1916).

95. "The Constitution has conferred upon the measure of the judicial power [illegible] or limit to the judges' exercise of the power to declare legislative acts void. The Judges have in fact become superior not only to the Legislature but to the Constitution

> we [the Court] don't like an act of Congress, we don't have much trouble to find grounds for declaring it unconstitutional."[96]

Article V of the Constitution provides that the latter may be amended only when two thirds of both Houses or two thirds of the state legislatures propose an amendment, which then must be ratified by three fourths of the states. However, five Justices may, and often have, accomplished the same result by the stroke of a pen.[97] A striking illustration of this occurred recently in two cases involving servicemen's wives who had been convicted by military courts-martial of murdering their husbands while overseas. On June 11, 1956, the Supreme Court upheld their convictions, stating that the trial of a civilian-dependent of a serviceman by a court-martial for offenses committed overseas did not violate the Constitution.[98] However, this very same Constitution, not a word changed, almost one year later gave defendants their freedom, the Court holding on rehearing that their trials were unconstitutional.[99] Nothing new had been added or changed.[100] The only thing that had changed was the composition of the Court and the mind of one of its members.[101]

Since the judicial determination of close constitutional questions depends in large measure upon the composition of the Court at the time the issue is argued, it is obvious that chance plays a great role in our Government.[102] This point has been convincingly made as follows: "Mr. Justice A dies in February instead of March. President B appoints his successor. Had

itself, since the Constitution is what the judges say it is." Foreword to 1 Boudin, Government By Judiciary at vi (1932). (Original italics omitted.) "[T]he only check on our own exercise of power is our own sense of self-restraint." Mr. Justice Stone dissenting in United States v. Butler, 297 U.S. 1, 79 (1936). Due process "is a matter which in the last analysis depends upon the Court's own discretion and nothing else." Corwin, The Constitution and What It Means Today 254 (12th ed. 1958).

96. Quoted in Foreword to Mason, The Supreme Court from Taft to Warren at vii (1958).

97. "[T]he court, in interpreting the Constitution, may and does, positively amend or change it." Frederick R. Coudert, quoted in 2 Boudin, Government by Judiciary 373 (1932). (All italicized in original.)

98. Reid v. Covert, 351 U.S. 487 (1956); Kinsella v. Krueger, 351 U.S. 470 (1956).

99. Reid v. Covert, 354 U.S. 1 (1957).

100. See analysis of decision in McLaren, Constitutional Law: Military Trials of Civilians, 45 A.B.A.J. 255 (1959).

101. Many other instances could be cited to show how a change in personnel has resulted in a complete switch in constitutional interpretation. See, e.g., Jones v. Opelika, 316 U.S. 584, rev'd on rehearing, 319 U.S. 103 (1943).

102. Mr. Justice Frankfurter has admonished his colleagues: "Especially ought the Court not reenforce needlessly the instabilities of our day by giving fair ground for the belief that law is the expression of [illegible] chance [illegible] of unexpected changes in the Court's composition and the contingencies in the choice of successors." United States v. Rabinowitz, 339 U.S. 56, 86 (1950) (dissent).

The resolutions and their prefatory language may be summed up as follows:[8]

(1) While members of the Association view some of the decisions of the Supreme Court as unsound and incorrect, the Association disapproves proposals to limit any jurisdiction vested in the Court. Where decisions of the Court weaken internal security, remedial legislation should be enacted by Congress, including a pronouncement that state statutes proscribing sedition against the United States shall have concurrent enforceability.

(2) Declarations by the Supreme Court to the effect that the House of Representatives has not been specific enough in defining the authority of the House Un-American Activities Committee have impeded the work of Congress, and the House of Representatives should, therefore, clarify its delegation of authority to this Committee.

(3) Subpoenas issued by congressional committees should be accompanied by a written copy of the precise terms of the committee's basic authority.

(4) Recent decisions of the United States Supreme Court have created problems of safeguarding national and state security and have been severely criticized as unsound by many responsible authorities. These problems are best resolved by a careful study of each decision and the prompt enactment by Congress of legislation to remedy any defect in existing law revealed by these decisions. In order to eliminate obstacles to the preservation of our internal security, legislation should be enacted in the following areas:

(a) Amendment of the Smith Act to define the word "organize" as including activities of an organizational nature;

(b) amendment of the Smith Act to make it a crime intentionally to advocate or teach the necessity of violent overthrow of the United States Government;

(c) establishment of the right of each branch of the Government to require as a condition of employment that an employee shall not refuse to answer a query as to subversive activities or as to any other matter bearing upon his loyalty;

(d) the executive branch should be permitted to deport any aliens who were or became communists at any time subsequent to entry into the United States; to enforce reasonable restrictions on aliens awaiting deportation to prevent them from engaging in activities on which their deportation order was based with the right to interrogate them concerning subversive associates or activities; and

(e) political propaganda by agents of foreign principals be 'labeled' for what it is where such agents are outside the United States but nevertheless directly or indirectly disseminating such propaganda within the United States.

for approval, in the case of this report [but] in the case of all other reports of Association Sections and Committees does not constitute endorsement [of] statements [in] the report itself, such statements being those of the individual members of the Committee." Malone, The Communist Resolutions. What the House of Delegates Really Did, 45 A.B.A.J. 344, 346 (1959).

8. A.B.A. Report, at A1471-72.

(5) The Sub-Committee on Internal Security of the Senate Judiciary Committee and the House Un-American Activities Committee have performed a great service to the nation and continuation of their work is essential. Said committees should maintain close liaison with the Attorney General and intelligence and security agencies.

The resolutions of the House of Delegates were greeted favorably in many quarters but met with a storm of disapproval in others. Joseph L. Rauh, Jr., former National Chairman of the Americans for Democratic Action termed the resolution "a disgrace to the legal profession."[9] Warren Olney III, Director of the Administrative Office of the United States Courts, resigned from the A.B.A., stating that the action taken was " 'so discreditable to the Association that I do not want to be identified with the organization any longer.' "[10] He charged that the delegates' action was " 'inconsistent with their professional obligations, as lawyers, to the courts.' "[11]

The American Civil Liberties Union stated that the report on the Supreme Court was " 'unprofessional and irresponsible' " and showed a " 'surprising disregard for fundamental human rights.' "[12] It maintained that the American Bar Association " 'has done a serious disservice upon the internal security of our country, the rights of people within it, and the concept of equal justice under the law as enunciated by the Supreme Court of the United States.' "[13] The Union denounced the report as " 'unworthy of the intellectual standard the bar should represent and the standards of professional ethics required by the A.B.A.' "[14] It also stated that the House of Delegates had ignored the fact that the Special Committee was " 'dominated by members intimately identified with the Federal security program.' "[15]

The Committee on Federal Legislation of the New York City Bar Association concluded that the A.B.A. resolutions had caused "concern and confusion" and had left an unfortunate "impression that recent decisions have endangered our security and that the Court has been insufficiently mindful of security needs."[16] It also criticized the A.B.A. for not mentioning that some Supreme Court decisions involving com-

9. N.Y. Post, March 2, 1959, p. 19, cols. 1-2.

10. N.Y. Times, April 9, 1959, p. 17, col. 3.

11. Ibid.

12. N.Y. Times, April 19, 1959, p. 1, col. 3.

13. Id. at 82, col 8.

14. Id. at 82, col. 1.

15. Id. at 1, col. 3.

16. Report of the Committee on Federal Legislation on the American Bar Association Recommendations Concerning Legislation to Alter the Effects of Recent Decisions of the Supreme Court of the United States, 14 Record of N.Y.C.B.A. 241 (1959) [hereinafter cited as 14 Record].

munism were favorable to the Government.[17] The National Lawyers Guild warned that the A.B.A. action constituted " 'a grave threat to the civil rights and liberties of the people.' "[18]

An expected source of criticism was the Communist Party which denounced the members of the Special Committee as "witch-hunters" and "reactionary corporation lawyers."[19]

In the face of this controversy, the President of the American Bar Association admonished that labeling of the resolutions of the House of Delegates as an attack upon the Supreme Court was "wholly unjustified and contrary to fact."[20] The Attorney General of the United States was quoted as stating that he did not consider the Association resolutions as an attack upon the Court.[21] Members of the New York State Bar Association also recently became "embroiled" in a controversy as to whether the A.B.A. had expressed criticism of the Supreme Court.[22] The A.B.A. Committee on the Bill of Rights has announced its disagreement with the conclusions of the Special Committee.[23]

A reading of the report and accompanying resolutions compels the conclusion that the A.B.A. did in fact criticize the Supreme Court, not as an institution, but rather as the author of poor decisions. Insofar as it relates to Supreme Court decisions, an accurate and simple summary of the Special Committee's report would be that the Committee disapproved of certain Supreme Court decisions and, because of their adverse affect on our internal security efforts, the Committee believed that these decisions should be remedied by legislation. The authors of this article believe that the report and the resolutions of the American Bar Association are justified. The type of criticism which has been generally aimed at the A.B.A. illustrates a double standard in thinking prevalent among some liberal quarters today which has frequently manifested itself in Supreme Court rulings as well. It consists of the application of one set of rules for the liberal side and another for those of different persuasions. It is particularly employed when any problem arises in connection with "civil liberties," particularly in the area of subversion.

The purpose of this article is to demonstrate that there is nothing unusual or improper about the manner in which the A.B.A. criticized the

17. Id. at 247.

18. Report of the National Lawyers Guild on the Recommendations of the American Bar Association in Hearings before the Subcommittee on Proposed Antisubversion Legislation of the Senate Committee on the Judiciary, 86th Cong., 1st Sess., pt. 1, at 235 (1959) [hereinafter cited as Senate Hearings].

19. Shields, Witchhunters Steer Bar Association Against Liberty, The Worker, March 22, 1959, p. 7, cols. 1-5.

20. Malo[illegible]

21. N.Y. Herald Tribune, April [illegible]

22. See N.Y. Times, June 28, 1959, § 1, p. 31, col. 3.

Supreme Court, and further that, on the merits, such criticism was completely warranted. An historical review of Supreme Court criticism will demonstrate the lack of impropriety or uniqueness in the A.B.A. action. A survey of the cases which the resolutions seek to remedy, as well as others mentioned in the Special Committee's report, will demonstrate that the A.B.A.'s conclusions do have a solid basis.

I. Criticism of the Supreme Court

The Supreme Court as an institution under our form of government should not be altered since the Court serves as a vital check on any abuse of power by the other two governmental branches and by the states. Impatience with certain holdings is certainly no justification for taking drastic action against the Court's basic structure. Any deficiencies in decisions may be cured by corrective legislation or constitutional amendment, if necessary.

However, this does not mean that the Supreme Court should remain immune to criticism. Appointment to this bench does not per se confer infallibility upon any individual. To deprive laymen and lawyers of the right to analyze and reprove policy-making pronouncements of the Supreme Court would be an undue curtailment of free speech. It is submitted that those who have spearheaded the attack on the A.B.A. resolutions are guilty of employing a double standard. When the Court-packing program was in focus in 1937, certain liberal elements countenanced criticism of the Supreme Court which renders that of the A.B.A. pale by comparison. Typical of the attacks upon the Court during that era was the following statement of President Franklin D. Roosevelt on March 9, 1937:

> The court in addition to the proper use of its judicial functions has improperly set itself up as a third house of the Congress—a superlegislature, as one of the justices has called it—reading into the Constitution words and implications which are not there, and which were never intended to be there.
>
> We have, therefore, reached the point as a nation where we must take action to save the Constitution from the court and the court from itself. . . .
>
> Our difficulty with the court today rises not from the court as an institution but from human beings within it.[24]

At that time, these liberals sought basic structural changes in the Supreme Court, espousing a short range view which demanded drastic, irrevocable action because of temporary impatience. All that we urge is the right to disagree with the Supreme Court, not the power to destroy it, as indeed was being advocated by many of the present-day defenders of the Court.

24. Quoted [illegible] Lawrence, Today in National Affairs, N.Y. Herald Tribune, March 6, 1956, p. 25, cols. 1-2.

A. *Criticism of the Court* (1789-1920)

The history of the Supreme Court is replete with controversy, and rarely has it not been under fire.[25] As far back as 1794, the Court's decision in *Chisholm v. Georgia*,[26] holding that the Constitution gave the federal judiciary power to summon states in contract actions, "fell upon the country with a profound shock."[27] The House of Representatives of Georgia reacted by passing a bill providing that any federal officer who attempted to execute process in the case was "'*guilty of felony, and should suffer death, without benefit of clergy, by being hanged.*'"[28] Shortly thereafter, the Court was vigorously assailed "'in most poignant anathema'" for upholding the Alien and Sedition Laws.[29]

Thomas Jefferson's first presidential term can be characterized as chiefly a struggle against the Supreme Court. Jefferson stated that it was a "very dangerous doctrine to consider the judges the ultimate arbiters of all constitutional questions,"[30] referring to the Court as "'subtle sappers and miners, constantly working underground to undermine the foundations of our confederated fabric . . . .'"[31]

President Andrew Jackson made assaults upon the Supreme Court an element of Jacksonian democracy.[32] In voicing defiance of one Supreme Court ruling, Jackson is reputed to have said, "John Marshall has pronounced his judgment: let him enforce it if he can."[33]

In 1834, the Supreme Court was depicted as the "great engine" of Congress, consecrating the latter's unconstitutional laws.[34] President

25. See Warren, Legislative and Judicial Attacks on the Supreme Court of the United States—A History of the Twenty-fifth Section of the Judiciary Act, 47 Am. L. Rev. 1, 161 (1913), for a detailed account of the numerous attacks on the appellate jurisdiction of the Court during the period from its inception up through 1913.

26. 2 U.S. (2 Dall.) 415 (1793).

27. 1 Warren, The Supreme Court in United States History 96 (rev. ed. 1932).

28. Quoted in 1 Boudin, Government by Judiciary 129 (1932).

29. Speech of Henry Lee before Congress, Jan. 23, 1801, quoted in Warren, Congress, the Constitution and the Supreme Court 121 (rev ed. 1935).

30. Foley, Jeffersonian Cyclopedia 845-46 (1900).

31. Warren, op. cit. supra note 29, at 196. Violent attacks were made on the Court for its decisions in McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819), upholding the congressional charter of the Bank of the United States, and Cohens v. Virginia, 19 U.S. (6 Wheat.) 264 (1821), which affirmed federal writs of error to state court judgments.

32. "The Congress, the Executive and the Court must each for itself be guided by its own opinion of the constitution . . . . The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve." 2 Richardson, Messages of the Presidents 582 (1896).

33. Quoted in 1 Bryce, The American Commonwealth 273 (1895).

34. Statement of Congressman Warren R. Davis of South Carolina, Chairman of the House Judiciary Committee, quoted in Warren, op. cit. supra note 29, at 197.

Martin van Buren "complained bitterly of the encroachments of the Supreme court, and declared that it would never have been created had the people foreseen the powers it would acquire."[35]

The most violent onslaught against the Court took place during the ten-year period after the passage of the fugitive slave law in 1850. The famous Lincoln-Douglas debates revolved mainly about the *Dred Scott*[36] decision. Lincoln maintained that while the decision controlled Dred Scott, he, Lincoln, would not be bound by it.[37]

In 1873, the Court was censured for being too conservative and pro-monopoly, while a few years later it was deemed in turn radical, anti-corporation, and anti-railroad.[38] In 1884, the Court's decision[39] declaring legal tender laws constitutional in both peace and war was assailed for foisting upon the country, dishonest, oppressive and unconstitutional legislation.[40] Labor, for its part, was denouncing the Court in 1908 for allegedly favoring capitalists and employers.[41]

In 1912, Gustavus Myers, author of a history of the Supreme Court, depicted the latter as the stronghold of "'reactionary' capitalism."[42] Senator Robert M. La Follette, in a stinging rebuke, asserted that:

> The regard of the Courts for fossilized precedent, their absorption in technicalities, their detachment from the vital living facts of the present day, their constant thinking on the side of the rich and powerful and privileged classes, have brought our Courts into conflict with the democratic spirit and purpose of this generation. Moreover . . . by presuming to read their own views into statutes without regard to the plain intention of the legislators they have become in reality the supreme law-giving institution of our government.[43]

B. *Criticism of the Court* (1920-1937)

Liberals today who condemn any criticism of the Supreme Court are those who a few years ago sought to destroy its role in our government. Little research is needed to unearth evidence of this during the period between 1920 and 1937.

35. 1 Bryce, op. cit. supra note 33, at 268 n.2.

36. Scott v. Sandford, 60 U.S. (19 How.) 393 (1857).

37. See 1 Boudin, op. cit. supra note 28, at 29-33. In commenting on this case, the New York Tribune charged that the Court had "rushed into politics" and that the decision was "entitled to just as much weight as would be the judgment of a majority of those congregated in any Washington barroom." Quoted in Williams, The Law of the Land, National Review, Dec. 22, 1956, p. 16.

38. Warren, op. cit. supra note 29, at 269.

39. Legal Tender Case, 110 U.S. 421 (1884).

40. Bancroft, The Constitution Wounded in the House of Its Guardians, cited in 1 Boudin, op. cit. supra note 28, at 23.

41. Warren, op. cit. supra note 29, at 269.
Quoted in Palmer, Causes of Dissents: Judicial Self-Restraint or Abdication, 34 A.B.A.J. 761, 763 (1948).

43. Ibid.

he lived a month longer, President C would have appointed his successor, the case of Smith *v.* Jones would be decided the other way, and the future course of history be changed."[103] The details of our judicial history "show how decisions of the gravest political consequence, decisions affecting the welfare of the people and the destinies of the country, frequently depended on the will or whim of some one Man, or on the accident of whether this or that Man happened to sit in the seat of power."[104]

The element of chance is present, of course, because five individuals decide each Supreme Court case. Each member brings to the bench his own personal habits of mind as well as his ethical, political, social and economic attitudes. To these must be added his legal training and personal conception of the function of a Supreme Court Justice. All of these factors, of course, vary greatly from man to man, and "how the Constitution will be interpreted by these men depends in part upon what kind of men they are and how the world looks to them."[105] Personal feuds within the Court itself will sometimes influence decisions,[106] while even the political leanings of law clerks selected by the Justices may have a considerable bearing on the cases heard by the Court.

Although the personal viewpoints of the individual Justices cannot help but affect their opinions somewhat, the Justices are expected to regard the law impartially. Mr. Justice Holmes, among others, scored any deviation from this strict requirement of objectivity:

> I have not yet adequately expressed the more than anxiety that I feel at the every increasing scope given to the Fourteenth Amendment in cutting down what I believe to be the constitutional rights of the States. As the decisions now stand, I see hardly any limit but the sky to the invalidating of those rights if they happen to strike a majority of this Court as for any reason undesirable. I cannot believe that the Amendment was intended to give us *carte blanche* to embody our economic or moral beliefs in its prohibitions. Yet I can think of no narrower reason that seems to me to justify the present and the earlier decisions to which I have referred.[107]

In recent years, members of the Supreme Court, more than ever before, have allowed their own personal views to influence or dictate the Court's decisions. This is due primarily to an abandonment during the past two decades of the rule of stare decisis.[108] Mr. Justice Douglas,

103. Whitney, The Insular Decisions of December, 1901, 2 Colum. L. Rev. 79 (1902).

104. Foreword to 1 Boudin, Government By Judiciary at viii (1932).

105. Pritchett, The American Constitution 48 (1959).

106. See, e.g., Schlesinger, The Supreme Court: 1947, Fortune, Jan. 1947, p. [illegible].

107. Baldwin v. Missouri, 281 U.S. 586, 595 (1930) (dissent). Note also his dissenting statement in Lochner v. New York, [illegible] U.S. at 75 [illegible]) that "the Fourteenth Amendment does not enact Mr. Herbert Spencer's Social [illegible]."

108. The status of the doctrine has varied from term to term. "Ever shaky in theory . . . [illegible]." The Constitution and What It Means [illegible]. 192 (7th ed. 1947). "In the entire history of the Court [illegible] to overrule previous decisions [illegible] [illegible] decision,

apparently echoing the sentiments of some of his brethren, has stated that stare decisis has "little place in American constitutional law."[109] In 1953, Mr. Justice Jackson voiced what thus continues to be a major criticism of the Court:

> Rightly or wrongly, the belief is widely held by the practicing profession that this Court no longer respects impersonal rules of law but is guided in these matters by personal impressions which from time to time may be shared by a majority of Justices. Whatever has been intended, this Court also has generated an impression . . . that regard for precedents and authorities is obsolete, that words no longer mean what they have always meant to the profession, that the law knows no fixed principles.[110]

The doctrine of stare decisis had previously greatly reduced the assertion of personal opinions in judicial decisions and rendered a measure of stability to the law. In disregarding it, the Court has run roughshod over precedent and thoroughly revamped our constitutional law.[111] In so doing, the Court has created considerable uncertainty in the law[112] causing its prestige to be greatly diminished.[113] Moreover, the frequency of dissents has also contributed to a lessening of respect for the Court.[114]

Nine Men Against America 149 (1958). Mr. Justice Douglas asserts that during the period between 1937 and 1947 the Supreme Court overruled 30 decisions, 21 involving constitutional questions, with the great majority of them having been decided within the previous 20 years. Douglas, An Almanac of Liberty 48 (1954).

109. Douglas, We the Judges 429 (1956).

110. Brown v. Allen, 344 U.S. 443, 535 (1953) (concurring opinion).

111. See, e.g., Corwin, op. cit. supra note 108, at 254.

112. "Under our constitutional system, moreover, an undiscriminating disregard of stare decisis by our Supreme Court in the interests of particular classes, groups, or philosophies has a peculiarly deleterious and disturbing effect." Precedent and Certainty in Law and Life, 34 A.B.A.J. 919, 920 (1948) (editorial). (Italics omitted.)

113. "Respect for courts must fall when the public and the profession come to understand that decisions are to have only contemporaneous value and that nothing that has been said in prior adjudication has force in a current controversy." Schwartz, The Supreme Court, Constitutional Revolution in Retrospect 353 (1957).

114. "The present fragmentation of the Court diminishes its prestige and substitutes for what was once regarded as the sacred oracular voice of an impersonal institution a babel of confused and jangling human tongues. It introduces a strong element of instability and unpredictability into the law that causes great concern and perplexity to counsel charged with the responsibility of advising clients and to the lower courts." Palmer, Present Dissents: Causes of the Justices' Disagreements, 35 A.B.A.J. 189 (1949). Lack of unanimity "is disastrous because disunity cancels the impact of monolithic solidarity on which the authority of a bench of judges so largely depends. People become aware that the answer to the controversy is uncertain, even to those best qualified, and they feel free, unless especially docile, to ignore it if they are reasonably sure that they will not be caught." Hand, L., The Bill of Rights 72 (1958). The increase in dissents is indicated by the following percentages of non-unanimous opinions per term: 1910, 18%; 1920, 17%; 1930, 11%; 1935, 16%; 1940, 28%; 1943-1944, 58%; 1945, 56%; 1946, 64%; 1951 80%; 1952, 71%; 1953, 64%; 1954, 60%; 1955, 58%. Palmer, Dissents and Overrulings:

It is not suggested by any means that the Court should never overrule previous decisions, but it is submitted that such action should be taken only under extraordinary circumstances, such as radically changed conditions brought about by a long passage of time. The only criterion for overruling used by certain members of the present Court seems to be merely their disagreement with a previous decision.

Disregard of precedent is a particular tendency of Justices Black, Douglas, Warren and Brennan who are said to adhere to that school of thought which believes that a judge should decide a case by first determining in his own mind what the law should be and then examining precedent for such use as may be made of it.[115] Under this view, the judge becomes a substitute for the legislator and decides what is best for the community.[116]

The danger of having the Court, or rather five Justices, presume to decide whether a law is good or bad for the people is, of course, obvious. In the first place, such procedure runs contrary to the principles of representative democracy, on which our nation is founded, and usurps the prerogatives and functions of the legislature. In the second place, mere ascendancy to the bench does not automatically endow a Justice with superior wisdom. Justices, like other human beings, may be careless with facts and reckless with opinions.[117]

The case of *Schware v. Board of Examiners*,[118] cited in the A.B.A. Special Committee's report,[119] is but one of many cases where the Court substituted its own personal policy-making views for the judgment of those whose function it is to make policy. In this case, the Court stated that New Mexico had no right to deny a man, otherwise qualified, admission to the bar because he had been a member of the Communist Party, used aliases, and had a record of arrests. While reasonable men may differ as to the applicant's fitness under these circumstances, surely it

A Study of Developments in the Supreme Court, 34 A.B.A.J. 554 (1948); Schwartz, op. cit. supra note 113, at 357, 402.

115. Schlesinger, supra note 106, at 201; Shannon, Earl Warren: Center of the Storm, N.Y. Post, May 17, 1959, § 2 (Magazine), p. 2.

116. It is easy for a jurist to believe that it is necessary to assume such a role if, for example, he has so little regard for the common sense of the American people that he can say that they are too quick to identify anyone who supports equal rights for Negroes as a communist because that happens to be a part of the Communist Party line. Douglas, The Right of the People 93 (1958).

117. For example, Mr. Justice Douglas states in his Almanac of Liberty that during 1952, in New York City alone, there were at least 58,000 orders issued allowing wiretaps. Douglas, Almanac of Liberty 355 (1954). As a matter of fact, only 480 orders were so issued. See Silver, Is Court-Ordered Wire-tapping Necessary to Combat Streamlined Efficiency of Organized Crime, Harv. L. Record, Feb. [illegible], p. 4, col.

118. 353 U.S. 232 (1957).

119. A.B.A. Report, [illegible] 474.

was improper for the Court to interfere with New Mexico's judgment in the matter.[120]

Some of the present Justices apparently believe that the Communist Party is merely another political organization and that many of its members are simply harmless, misguided idealists.[121] Dealing sympathetically with a Party member is not difficult when one has such views. Since these Justices also do not feel bound by precedent and believe that they are the final judges of what is good for the community, all the more readily does the Communist Party member become the beneficiary of a favorable decision.

An analysis of Supreme Court decisions as of 1958 reveals the favored treatment received by communist or subversive defendants at the hands of certain Justices. As of the time the survey was made, Mr. Justice Black had participated in 71 decisions involving communists or internal security matters, and each time ruled against the Government; Mr. Justice Douglas was anti-Government in 66 out of 69 such cases; Chief Justice Warren in 36 out of 39; and Mr. Justice Brennan in 18 out of 20 cases.[122] The Government's "batting average" has not improved since.

The Committee on Federal Legislation of the New York City Bar Association, in commenting on the report of the A.B.A. Special Committee, stated that the Court's decisions in four cases[123] "demonstrate graphically that the Court is fully mindful of the nation's stake in protection against Communism"[124] and depicted as "outstanding"[125] the decision in *United States v. Ullmann*,[126] which upheld the constitutionality

120. Along the same line is the case of Konigsberg v. State Bar of Cal., 353 U.S. 252 (1957), wherein the Court said it was improper for California to refuse an applicant admission to the bar because he had declined to answer questions as to present and past communist membership.

121. Mr. Justice Douglas has referred to communists as "peddlers of unwanted ideas. They were more thoroughly investigated and exposed than any group in our history. They were the most unpopular people in the land. . . . Yet the Court sanctioned the suppression of speech which Congress determined to be 'dangerous.'" Douglas, The Right of the People 51 (1958). See also Dennis v. United States, 341 U.S. 494, 589 (1951) (Douglas, J., dissenting). Mr. Justice Black contends that people have a right "to join organizations, advocate causes and make political 'mistakes' without later being subjected to governmental penalties for having dared to think for themselves. It is this right, the right to err politically, which keeps us strong as a Nation." Barenblatt v. United States, 360 U.S. 109, 144 (1959) (dissent).

122. 104 Cong. Rec. 12121-22 (daily ed. July 10, 1958) (remarks of Senator Eastland).

123. Lerner v. Casey, 357 U.S. 468 (1958); Beilan v. Board of Educ., 357 U.S. 399 (1958); Yates v. United States, 354 U.S. 298 (1957); Ullmann v. United States, 350 U.S. 22 (1956). See 14 Record at 248.

124. 14 Record at 249.

125. Id. at 247.

126. 350 U.S. [illegible] (1956).

of a recently-enacted immunity statute. The A.B.A. Special Committee, of course, did not allege that there were no internal security cases decided in favor of the Government, but instead asserted that in "many" cases, the Court's decisions had adversely affected our internal security efforts.[127]

In any event, there is nothing "graphic" about the four cases cited by the Committee on Federal Legislation, nor is there anything "outstanding" about the *Ullmann* case. Inasmuch as immunity statutes of the type involved in *Ullmann* had repeatedly been sanctioned since the 1896 Supreme Court decision in *Brown v. Walker*,[128] it would have indeed been astounding had the Court not decided in favor of the Government. Moreover, in *Beilan v. Board of Educ.*[129] and *Lerner v. Casey*,[130] both decided by 5-4 margins, the Court had its 1951 decision in *Garner v. Board of Pub. Works*[131] as a square precedent. It is to be noted that Justices Douglas and Black voted against the Government in each of these three cases, that Chief Justice Warren voted against the Government in two of the three, and Justice Brennan in the two in which he participated.

The fact that each of the Justices voted with the majority in some cases cited in the A.B.A. report is not a factor of any significance. It would indeed be remarkable if there was a Justice who never found a communist defendant with a valid legal point. This surely would tend to indicate a prejudice on his part. What is remarkable is that there are four justices who practically never vote for the Government in security cases.

Apart from the specific field of internal security, the Court has also been extreme, but to a lesser degree, in the area of "civil liberties." Of course, if a Justice personally believes that "the police have always been less inclined to use their wits than their fists,"[132] then he is apt to sympathize readily with a defendant who claims to have been victimized by the police. An analysis of fifty civil liberty cases decided by the Court during the 1957-58 term reveals that Mr. Justice Douglas voted against the Government in 49, Mr. Justice Black in 45, Mr. Chief Justice Warren in 42 (out of 48) and Mr. Justice Brennan in 40 (out of 48) of such cases.[133] These extreme ratios suggest the imposition of personal views.

127. See A.B.A. Report at A1470. Although the A.B.A. Report cited some twenty-four cases to illustrate the pattern of the Court's decisions, the legislation recommended by the Special Committee was aimed at only six of them.

128. 161 U.S. 591 (1896).

129. 357 U.S. 399 (1958).

130. 357 U.S. 468 (1958).

131. 341 U.S. 716 (1951).

132. Douglas, An Almanac of Liberty 24, (1954).

133. Pollitt, Should the Supreme Court Be 'Curbed'? A Presentation of Civil Liberties

As a result of the conduct of the Supreme Court during the past two decades, the situation has reached a stage where:

> [T]he judicial process [is] a thing of mere utility and force, tempered with emotion, whim and intuition. The man in the street can feel the sands shifting under him. There is no more certainty in the law since consistency is not to be expected at the summit of the law. There are no more permanent rights, no more unalienable rights, no more natural rights. . . ."[134]

Retirement of some of the present Justices and their replacement by those who adhere more to the traditional role of a judge appear to offer the best hope for a reversal of this trend.[135]

III. The Use of the "Liberal Double Standard"

We have already seen that many liberals now staunchly protesting any criticism of the Court, as an institution or otherwise, sought to devitalize it when objectionable decisions were made. This reaction to the A.B.A. report and resolutions is not the only example of their use of a double standard. For example, members of the American Civil Liberties Union would be the first to condemn those who contend that a program or principle must be bad because Communists support it. Yet, the Union has criticized the A.B.A. report because the Committee that prepared it was "'dominated by members intimately identified with the Federal security program.'"[136] The report, of course, should be considered on its merits, and an attack of this nature is highly improper. Inasmuch as the report deals with internal security decisions, it is only logical and proper that experts in that field should have participated in its preparation.

Many liberals applaud the decision of the Supreme Court in such cases as *Watkins v. United States*[137] which severely restricted the power of

134. Sermon by Rev. Robert Gannon, S.J., Red Mass of the Catholic Lawyers Guild of the Diocese of Brooklyn, Sept. 18, 1958, in 105 Cong. Rec. A31, 32 (daily ed. Jan. 9, 1959).

135. It has been suggested that the failure to appoint men with judicial experience has been responsible to a great extent for the wayward course the Court has taken. Of the twelve appointments made during the period between 1937 and 1955, eight of the Justices had no previous judicial experience at all, one had previous experience in a police court and another in a recorder's court, and only two, Justices Vinson and Minton, had any experience to speak of. President Eisenhower has reversed this trend, and his last four appointments have had at least some judicial experience. Promotions from lower courts would indeed seem to be beneficial not only for the Supreme Court, but for federal courts of appeal as well. Of 54 appointments to appellate courts by President Roosevelt, only 18 were from lower courts; President Truman had 15 out of 27, and of President Eisenhower's first 22 appointments, only 7 were from lower courts. Miller, The Selection of the Federal Judiciary: The Profession is Neglecting Its Duty, 45 A.B.A.J. 445, 447 (1959).

136. Quoted in N.Y. Times, April 19, 1959, p. 1, col. 5.

137. 354 U.S. 178 (1957).

Congress to investigate subversion. However, in the 1920's, when suggestions were made to curtail congressional investigations of the Teapot Dome scandal, they were most articulate in their opposition.[138] The following statement of Woodrow Wilson from his *Congressional Government* was often quoted:

> Quite as important as legislation is vigilant oversight of administration; and even more important than legislation is the instruction and guidance in political affairs which the people might receive from a body which kept all national concerns suffused in a broad daylight of discussion. . . .The informing function of Congress should be preferred even to its legislative function.[139]

Such phrases as "the right to privacy" or "exposure for the sake of exposure" were either shunned or criticized. In 1926, in supporting the investigating power of Congress, Professor James M. Landis could thus write:

> It may well be that the effect of such an investigation as that of Attorney General Daugherty in 1924 is to impeach him at the bar of public opinion, and that realizing the investigation would have such an effect, a purpose to do so was made manifest by the Senate. But it is no answer to say . . . that 'the Senate has no power to impeach any federal officer at the bar of public opinion, no matter what possible good may come of it.' Impeachment . . . represents only the reaction of public opinion to the facts elicited by a Senate inquiry. Such a reaction may over-awe the Chief Executive and compel him to exercise his power of removal. In default of such action Congress can do as it may deem necessary.[140]

In that same era, Mr. Justice Brandeis was asked privately whether he thought it would be a good idea for a newspaper to comment editorially that individual rights were being transgressed in the Teapot Dome investigation. Brandeis replied in the negative, stating that "the needful results of Congressional inquiries can be 'achieved only by complete freedom and pursuit.' "[141]

The extensive scope of legislative investigating power was delineated by Louis Boudin who wrote that there is "practically nothing of any importance that occurs in the life of the nation or of the state that is not of legislative concern."[142]

Judge Learned Hand[143] has referred very emphatically to a double

138. See, e.g., Potts, Power of Legislative Bodies to Punish for Contempt, 74 U. Pa. L. Rev. 691 (1926).

139. Wilson, Congressional Government 195-98 (Meridian ed. 1956).

140. Landis, Constitutional Limitations on the Congressional Power of Investigation, 40 Harv. L. Rev. 153, 220-21 (1926).

141. Quoted in Krock, In the Nation, The Civil Liberty Issue in Congressional Inquiries, N.Y. Times, June 28, 1957, p. 22, col. 5.

142. 2 Boudin, Government by Judiciary 312 (1932). Boudin criticized Kilbourn v. Thompson, 103 U.S. [illegible] (1881) relied upon by the Supreme Court in the Watkins case, as "utterly unwarranted by the Constitution." Id. at 315.

143. Hand, The Bill of Rights (1958).

standard which has been employed by the Supreme Court. When any question of interference with civil liberties is involved, the Court is quick to intervene, but when alleged infringement of property rights is the issue, the Court has been considerably less than enthusiastic. He notes:

> I cannot help thinking that it would have seemed a strange anomaly to those who penned the words in the Fifth to learn that they constituted severer restrictions as to Liberty than Property. . . . I can see no more persuasive reason for supposing that a legislature is *a priori* less qualified to choose between 'personal' than between economic values; and there have been strong protests, to me unanswerable, that there is no constitutional basis for asserting a larger measure of judicial supervision over the first than over the second.[144]

Numerous examples could be cited illustrating the different standards used by Supreme Court members in dealing with problems relating to subversion on the one hand, and non-subversive problems on the other. In writing about the Teapot Dome investigations, Mr. Justice Frankfurter defended this congressional inquiry despite the attendant abuse of individuals.[145] He made several pertinent observations:

> Undoubtedly, the names of people who have done nothing criminal or wrong, or nothing even offending taste perhaps, have been mentioned in connection with these investigations. . . . The question is not whether people's feelings here and there may be hurt or names 'dragged through the mud,' as it is called. The real issue is whether the danger of abuses and the actual harm done are so clear and substantial that the grave risks of fettering free congressional inquiry are to be incurred by artificial and technical limitations upon inquiry. . . . [C]ongressional inquiry ought not to be fettered by advance rigidities, because in the light of experience there can be no reasonable doubt that such curtailment would make effective investigation almost impossible. . . .
>
> Whatever inconveniences may have resulted are inseparable incidents of an essential exertion of governmental power, and to talk about these incidents is to deflect attention from wrongdoing and its sources. . . .
>
> The procedure of congressional investigation should remain as it is. No limitations should be imposed by congressional legislation or standing rules. The power of investigation should be left untrammeled. . . . The safeguards against abuse and folly are to be looked for in the forces of responsibility which are operating from within Congress, and are generated from without.[146]

Notice how the right of the individual is minimized: while innocent people may be harmed, the paramount consideration is that the investiga-

144. Id. at 50-51. Supporting Judge Hand's position, among other cases, is a recent Supreme Court decision summarily reversing, without opinion, a judgment in favor of a farmer who had been fined by a federal agency for raising wheat in violation of a government statute, which wheat was used to feed his own cattle. United States v. Haley, 358 U.S. 644 (1959), reversing 166 F. Supp. 336 (N.D. Tex. 1958). The Court obviously felt that a farmer does not have a constitutional right to plant what he pleases on his own property, even though the product never leaves the farm.

145. Frankfurter, Hands Off the Investigations, New Republic, May 21, 1924, p. 329.

146. Id. at 330-31.

tion continue unhampered. In 1957, this same justice concurred in the *Watkins* decision[147] which severely restricted congressional investigations of subversion and threatened the very existence of the House Un-American Activities Committee.

When Mr. Justice Black was a Senator and the head of a committee investigating corporations, he thus championed the penetrating publicity accorded legislative investigating hearings:

> Just as persons and firms have been reluctant to exhibit their papers before the hearings, so they now reveal the same resistance to answering questions. . . . Of course many merely insist that the question relates to personal and private matters. . . . This sort of thing taxes severely the patience of an investigator. It accounts often for what newspaper enemies of investigation refer indignantly to as the bullying and badgering of witnesses. . . . Public investigating committees have always been opposed by groups that have or seek special privileges. The spokesmen of these greedy groups never rest in their opposition to exposure and publicity. . . .[148]

Black thus maintains it is correct to expose the businessman to "the rays of pitiless publicity," but on the question of exposing communists, he believes that "exposure for the sake of exposure" is wrong.[149]

The reaction of some members of the present Court to the Government-enforced evacuation of thousands of Japanese-American citizens from their homes and businesses during the early days of World War II is in marked contrast to their treatment of communist subversives today. In *Korematsu v. United States*,[150] Mr. Justice Black wrote an opinion, concurred in by Justices Douglas and Frankfurter, sustaining the conviction of a native-born American citizen whose only offense was to remain at his home. This harsh handling should be compared with the lenient treatment accorded to communists by the Court today.[151]

This double standard is simply a reflection of the present type of thinking which thoroughly permeates many liberal minds today. It is especially reflected in matters involving the fifth amendment. As Professor Sidney Hook has said, "there seems to be a double standard of legal and moral bookkeeping involved in the judgment and sometimes

147. 354 U.S. 178 (1957).

148. Black, Inside a Senate Investigation, Harper's Magazine, Feb. 1936, pp. 283-86.

149. See, e.g., Watkins v. United States, 354 U.S. 178 (1957). In the Senate hearings held prior to the confirmation of his appointment to the Supreme Court, Mr. Justice Brennan stated that the investigation and exposure of communists constituted a "vital function" of Congress. N.Y. Times, Feb. 28, 1957, p. 16, col. 4. Yet, since joining the Court, he has regarded every exposure of subversives by legislative committees as "exposure for exposure's sake." See, e.g., Barenblatt v. United States, 360 U.S. 109 (1959); Uphaus v. United States, 360 U.S. 72 (1959); Watkins v. United States, 354 U.S. 178 (1957).

150. 323 U.S. 214, (1944).

151. It is interesting to note that J. Edgar Hoover ... relocation [of] the Japanese Americans. He wrote the Attorney General and the President that "[t]he whole operation was based not on public interest but on political pressure ... hysteria." Gordon, ...

the treatment of Fifth Amendment cases, depending upon the individuals involved."[152] Editorial support is tendered Supreme Court decisions which decry the drawing of inferences from invocation of the fifth amendment when questions relate to Communist Party membership, but when a labor leader claims this constitutional privilege on non-subversive matters, his removal from office is demanded because of the cloud of suspicion thus arising from his use of the amendment.[153]

When subversives are the targets of congressional committees, liberals loudly denounce "exposure for exposure's sake." However, they remain silent when the chief counsel of a senate investigating committee refers to a national labor figure in the following language:

> But I'm not harrassing him. This is an important thing. The only way to get people to do the job—the courts, the Justice Department, the Congress—is to keep the pressure on. And keep it on *him*. This is not maybe the purpose of a congressional committee. But I think he's a very evil influence in the United States, a tremendous power, and I just think that something has got to be done about it. If no one else is going to do it, we will.[154]

Many Americans have been duped by the outpourings of the efficient communist propaganda machine.[155] J. Edgar Hoover thus appraises the effect of this delusion:

> To me, one of the most unbelievable and unexplainable phenomena in the fight on communism is the manner in which otherwise respectable, seemingly intelligent persons, perhaps unknowingly, aid the Communist cause more effectively than the Communists themselves. The pseudoliberal can be more destructive than the known Communist because of the esteem his cloak of respectability invites.[156]

IV. Recent Supreme Court Decisions Affecting Internal Security

A brief review of some recent Supreme Court decisions, particularly those at which the A.B.A. resolutions are aimed, will demonstrate that the Court has frequently ignored precedent and employed fallacious reasoning in asserting its own personal, and often policy-making, views.

152. Letter to the N.Y. Times, May 10, 1957, p. 26, col. 6.

153. N.Y. Times, March 28, 1957, p. 30, col. 1 (editorial).

154. Quoted in Martin, The Struggle to Get Hoffa (pt. 4), The Saturday Evening Post, July 25, 1959, pp. 30, 86.

155. See, e.g., the testimony of John W. Hanes, Jr., Administrator, Bureau of Security and Consular Affairs, Department of State, in Senate Hearings at 276. Mr. Hanes decribed how a clever campaign by the Communist Party against the State Department policy of refusing passports to communists achieved respectability when some sincere people "became disturbed by the argument that the regulations permitted the Secretary of State arbitrarily to restrict a citizen's rights." Ibid.

156. Quoted in testimony of Edgar C. Bundy in Hearings on the Limitation of the Appellate Jurisdiction of the United States Supreme Court Before the Subcommittee on Internal Security of the Senate Committee on the Judiciary, 85th Cong., 2d Sess., pt. 2, at 184 (1958) [hereinafter cited as 1958 Senate Hearings].

A. *Jencks v. United States*[157]

The defendant, a union president, was convicted of filing a false non-communist affidavit. At his trial, he had requested that certain F.B.I. reports submitted by two government witnesses be turned over to the court for inspection to determine their impeachment value. Because no showing had been made that the reports of the witnesses were inconsistent with their trial testimony, the request was denied.

The Supreme Court reversed Jencks' conviction,[157] holding that the defendant himself is entitled to unrestricted inspection of any statements or reports "touching the evidence and activities"[158] about which a witness has testified. The Court further declared that if the Government did not produce such statements or reports, then the indictment should be dismissed.[159]

It had been a well-established practice in the federal courts that a pre-trial statement of a witness would not be turned over to a party until (1) there had been a showing of inconsistency, and (2) after the judge had inspected the statement to determine its relevancy.[160]

In attempting to bolster its decision, the *Jencks* Court quoted from *Gordon v. United States*[161] to the effect that similar requests there (1) did not entail a broad fishing expedition, and (2) were related to statements by persons offered as witnesses.[162] The Court construed the *Gordon* case as holding that these were the only prerequisites for the production of a witness' statement. Mr. Justice Clark, in his dissent, correctly pointed out that the *Gordon* quotations were "lifted entirely out of context."[163] Immediately preceding them, the *Gordon* Court had acknowledged that by a proper cross-examination, "defense counsel laid a foundation for his demand by showing that the documents were . . . contradictory of his [the witness'] present testimony . . . ."[164]

The Supreme Court noted with approval Judge Learned Hand's statement in *United States v. Andolschek*[165] declaring that "prosecution necessarily ends any confidential character the documents may possess." However, the Second Circuit rule was as clear as it was elsewhere before the *Jencks* case.[166] As expressed by Judge Hand himself, "statements

157. 353 U.S. 657 (1957).

158. Id. at 668.

159. Id. at 672.

160. Gordon v. United States, 344 U.S. 414 (1953); Goldman v. United States, 313 U.S. 129 (1942).

161. 344 U.S. 414 (1953).

162. Id. at 419.

163. 353 U.S. at 680 n.2.

164. 344 U.S. at 419.

165. 142 F.2d 503, 506 (2d Cir. 1944).

166. See, e.g., United States v. Beckman, 155 F.2d 580 (2d Cir. 1946); United States v. De Normand, 149 F.2d 622 (2d Cir. 1945); United States v. Simonds, 148 F.2d 177 (2d Cir. 1945); United States v. Ebeling, 146 F.2d 254 (2d Cir. 1944); United States v. Krulewitch, 145 F.2d 76 (2d Cir. 1944); United States v. Cohen, 145 F.2d 82 (2d Cir. 1944).

of witnesses taken by one party in preparation for trial need not be disclosed to the opposite party, unless the judge holds on inspection that their contents is [sic] relevant."[167] The *Jencks* case, as is typical of many recent Supreme Court decisions, produced tremendous confusion, especially on the question of whether or not a defendant was entitled to receive, prior to the start of trial, the previous statements of prospective witnesses.

Congress promptly took action to remedy the decision. It agreed basically with the Court's new rule that a defendant should be entitled to a witness' pre-trial statement concerning the subject matter of his testimony, but statutorily revised and limited the effect of the Court's holding as follows:[168]

(1) The Government need only produce "written reports" or "substantially verbatim" transcripts of oral statements;
(2) If any report contains matter related to the witness' testimony and matter not related to his testimony, the trial judge, after inspection and before the defendant sees it, must remove the unrelated material;
(3) The reports need not be produced until after the witness has testified at the trial;
(4) The penalty for non-production of the report is striking out the witness' testimony or a mistrial at the judge's discretion.

B. *Cole v. Young*

In 1950 Congress subjected the employees of eleven specified federal departments and agencies to a new security program and provided that the law might be extended to "such other departments and agencies of the Government as the President may, from time to time, deem necessary in the best interests of national security."[169] Pursuant to this authority,

167. United States v. Coplon, 185 F.2d 629, 638-39 (2d Cir. 1950). Judge Hand added that "while it is true that this deprives the party who is denied inspection of any opportunity to dispute the judge's conclusion, that is unavoidable." Id. at 639.

168. 18 U.S.C. § 3500 (1958). This statute was recently upheld in Palermo v. United States, 79 Sup. Ct. 1217 (1959). The Jencks decision was further modified in Pittsburgh Plate Glass Co. v. United States, 79 Sup. Ct. 1237 (1959), and Galax Mirror Co. v. United States, 79 Sup. Ct. 1237 (1959), both being 5-4 decisions wherein the Court held that the Jencks rule did not apply to the production of a witness' grand jury testimony.

169. 64 Stat. 476-77 (1950), 5 U.S.C. § 22(1)-(3) (1958). This statute gives a federal employee the right to a written statement of any charges against him and the right to a hearing. The decision by his agency head is conclusive and final. Act of Aug. 24, 1912, ch. 389, 5 [illegible] Stat. 555, as amended, 5 U.S.C. § 652 (1958) [illegible] the Act of June 27, 1944, [illegible] 5 U.S.C. § 863 (1958) [illegible] affected by [illegible] the discharge of an employee on loyalty grounds, but, among other procedural rights, enable the

the President issued a 1953 order extending the provisions of the 1950 statute "to all other departments and agencies of the Government."[170] The loyalty security program was thus enlarged to include all federal employees.

Under this order, Cole, an inspector in the Department of Health, Education and Welfare, was discharged by his agency head on loyalty grounds, his employment having been found to be not "clearly consistent with the interests of national security."[171] Cole had a statutory right to answer the charges and to have a hearing, but declined to use it. In going against the plain wording of the statute, the Supreme Court ruled that Cole's discharge was improper, holding that Congress did not intend to authorize the President to discharge employees in "non-sensitive positions."[172] Yet the legislative history of the statute, ignored by the Court, shows clearly that Congress sought to entrust the President with this broad power.[173]

By this decision, the Court clearly substituted its judgment for that of the President. Congress authorized the President to extend the security program whenever he deemed it "in the best interests of national security" to do so. The Court concluded that national security would not be served by an extension of the program to persons in "non-sensitive" positions, thus unduly intruding into an area in which it did not belong.

The reasoning of the Court is unrealistic. A person in a non-sensitive position, for example, a cleaning woman, might perpetrate acts of espionage resulting in incalculable harm. As a matter of fact, a number of government employees named as members of communist espionage rings either got their start in, or actually operated out of, such "non-sensitive" agencies as the Work Projects Administration, the Agricultural Adjustment Administration, the National Youth Administration, and the like.[174]

It is recognized that reasonable men may differ on how far the governmental security program should be applied, but it is submitted that this is the prerogative of the legislative and executive branches of the Government, and not the judiciary.

C. *Kremen v. United States*

In its report, the A.B.A. Special Committee intimated that the Supreme Court was reversing convictions of communists on technicalities. Interpretation of this phase of its report has led to the charge that the

170. Exec. Order No. 10450, 18 Fed. Reg. 2489 (1953), as amended by Exec. Order No. 10491, 18 Fed. Reg. 6583 (1953).

171. 351 U.S. 536, 540 (1956).

172. Id. at 557.

173. Id. at 567 (Clark, J., dissenting).

174. Hearings on Communist Party Infiltration in the United States Government Before the House Un-American Activities Committee, 80th Cong., 2d Sess. 513-14 (1948).

Committee has described "due process" as a technicality.[175] Such criticism is manifestly unjust. What the Committee actually suggested was that under the cloak of "due process," technicalities were being used to free communist defendants. "Due process" is not a technicality but neither is every technical deficiency a deprivation of due process.

Kremen v. United States[176] is illustrative of the use of hazy technicalities to free subversives. Certain communist leaders, fugitives from justice, were located by the F.B.I. in a secluded four-room cabin in California, along with the defendants Kremen, Coleman and another.[177] The F.B.I. possessed arrest warrants but no search warrants. Shortly after the arrest, a search of the cabin and a seizure of its entire contents were made, with the latter sent to the F.B.I.'s office in San Francisco for further examination. The defendants were subsequently convicted of harboring fugitives and of conspiring to commit that offense.

The Supreme Court reversed their conviction on the sole ground that "the seizure of the entire contents of the house and its removal some 200 miles away to the F.B.I. offices for the purpose of examination are beyond the sanction of any of our cases."[178] Not one case was cited by the Court in support of its opinion, nor did the Court state how and to what extent the seizure was "beyond the sanction" of previous cases. No previous case had ever held that the validity of a seizure depended on the quantity of items seized. There is no question that the arrests here were valid, and certainly the Supreme Court had previously permitted a complete and thorough search of a home as an incident to a valid arrest.[179]

The removal "some 200 miles away to the F.B.I. offices," the Court felt, was improper. It is difficult to understand what difference it would have made on the question of defendants' guilt whether articles had been removed but one mile away or even examined on the premises itself. Certainly, the technicality that the nearest F.B.I. office happened to be 200 miles away should not be a basis for reversal.

As the dissenting opinion pointed out,[180] only a fragmentary part of the items seized had been admitted into evidence and at most constituted harmless error since there was otherwise ample evidence of guilt. The majority opinion was absolutely silent on this point, leaving one to specu-

175. Quoted in N.Y. Times, April 19, 1959, p. 82, col. 1.

176. 353 U.S. 346 (1957).

177. See Kremen v. United States, 241 F.2d 155 (9th Cir. 1956), for a full statement of the facts.

178. 353 U.S. at 347. The Court set forth in a ten-page appendix an inventory of the seized items, most of which were of a purely personal nature.

179. See, e.g., Harris v. United States, 331 U.S. 145 (1947) (three and a half room apartment).

180. 353 U.S. at 348.

late that the Court possibly feels that if any illegally seized material is received in evidence, no matter how insignificant, a reversal is mandatory.

D. *Fifth Amendment Cases*

A clear example of the change which has occurred in the Supreme Court's attitude may be found in fifth amendment cases. Until the communists began to invoke the fifth amendment en masse in congressional investigations about a decade ago, the Court saw nothing wrong in rebuking those who invoked this constitutional privilege. As far back as 1896, the Supreme Court referred to such an individual as a "self-confessed criminal."[181]

Today, the Supreme Court approves Dean Griswold's statement that the fifth amendment is "one of the great landmarks in man's struggle to make himself civilized."[182] During the earlier part of this century when the privilege was utilized by non-communists, e.g., officers of large corporations, many liberals favored eliminating the fifth amendment. Mr. Justice Cardozo, in 1937, asserted that the fifth amendment could be destroyed without impairing the administration of justice.[183] The Supreme Court had previously pointed out that this privilege is not recognized in other countries and "is nowhere observed among our own people in the search for truth outside the administration of the law."[184]

Typical of this attitude was the 1926 statement of the Eighth Circuit Court of Appeals that honest men do not remain silent when their motives are assailed.[185] In 1936, Mr. Justice Black approved the remark of Woodrow Wilson that "if there is nothing to conceal then why conceal it? . . . [W]e believe it a fair presumption that secrecy means impropriety."[186] Yet in 1955, Chief Justice Warren referred to the possibility of a stigma being attached to invocation of the fifth amendment "in these times" as though something novel was occurring in our history.[187]

181. Brown v. Walker, 161 U.S. 591, 605 (1896).

182. Griswold, The Fifth Amendment Today (1955), cited in Ullmann v. United States, 350 U.S. 422, 426 (1956).

183. Palko v. Connecticut, 302 U.S. 319, 325-26 (1937).

184. Twining v. New Jersey, 211 U.S. 78, 113 (1908). Judge Jerome N. Frank did not consider the fifth amendment as one of the more important guarantees. United States v. St. Pierre, 132 F.2d 837, 847 (2d Cir. 1942), (dissent). In 1933, Judge Samuel Seabury urged that the "privilege should be made inapplicable to cases where the subversion of the very processes of government is involved . . ." Seabury, Foreword to Herwitz & Mulligan, The Legislative Investigating Committee, 33 Colum. L. Rev. 1, 7 (1933).

185. United States v. Mammoth Oil Co., 14 F.2d 705, 720 (8th Cir. 1926).

186. Quoted in Black, Inside a Senate Investigation, Harper's Magazine, Feb. 1936, at 172.

187. Emspak v. United States, 349 U.S. 190, 195 (1955). Here the Court reversed a contempt conviction of a witness appearing before the House Un-American Activities Committee. After the witness had charged that the Committee was trying perhaps to frame people for possible criminal prosecution," 349 U.S. at 195, the following dialogue occurred:

'Mr. Moulder. Is it your feeling that to reveal your knowledge of [individuals witness asked to identify] . . . would subject you to criminal prosecution?
Mr. Emspak. No. I don't think this committee has a right to pry into my associations. That is my own position.' Id. at 195-96.
The Government maintained that the witness' answer constituted an effective disclaimer of the privilege against self-incrimination, but the Court ruled that his reply was equivocal. It said the Committee should have been ready to recognize a "veiled claim of the privilege." Id. at 195.

188. 132 F.2d 837 (2d Cir. 1942).

189. Ibid.

190. As Professor Hook observes, "those invoking the fifth amendment enjoy a rhetoric of defense . . . so grandiose that one would imagine honest heretics, instead of evasive conspirators, were being questioned." Hook, Common Sense and the Fifth Amendment 104-05 (1957).

191. Even those liberal in their views on the fifth amendment concede that fear of prosecution for perjury in truthfully denying Communist Party membership is not a valid basis for its invocation. See, e.g., Taylor, Grand Inquest, The Story of Congressional

Judge Frank's dissent in *United States v. St. Pierre*[188] illustrates the change in thinking that has taken place during the past few years. In this dissent, written in 1942, he comments that judges who did not comply with the demand to eliminate the fifth amendment "by emasculating interpretations" were deemed to be "reactionary"![189]

Present views regarding the fifth amendment have reached such an opposite extreme that those who invoke it are regarded by some as heroic defenders of the Constitution.[190]

We are now advised that it is improper to draw any unfavorable inferences from invocation of the amendment. The fallacy in this attitude is that its admonition is not confined to use in the courtroom. The rules of law which may prevent men from going to jail are not binding on a citizen's own appraisal of another's guilt or innocence. For example, a man may be innocent in the eyes of the law because the statute of limitations prevents his prosecution, but a citizen is not compelled to so regard him in the face of damning evidence of guilt.

Outside of the courtroom, certain inferences not only may, but logically must, be drawn from invocation of the fifth amendment. For example, if a man is asked whether or not he has ever been a member of the Communist Party and properly invokes the fifth amendment, the only possible logical conclusion is that he has been a member of the Communist Party. A negative answer could not conceivably tend to incriminate him. Whether or not there should also be an inference that he has committed a crime (by having been a Communist Party member) is another matter.

Dean Griswold's only answer to the position here taken[191] is that hypothetically a person invoking the privilege as to Communist Party

membership may not have been a Party member but may have been affiliated with communist fronts, and if he denies party membership he may have "to undertake to state and explain" his membership in said fronts.[192] However, Dean Griswold does not say why this person could not and should not deny party membership and then invoke the privilege when questioned on the fronts.[193]

Consonant with its position that no unfavorable inferences should be drawn from an invocation of the fifth amendment, the Court held in *Slochower v. Board of Educ.*[194] that it was violative of the due process clause for New York City to discharge a professor who had invoked the amendment when questioned about Communist Party membership by a Senate committee. Inasmuch as state action should not be deemed a deprivation of due process where reasonable men differ as to the propriety of said action,[195] the *Slochower* Court, in effect, ruled that it is unreasonable to draw any unfavorable inferences from invocation of the fifth amendment.[196] The fact is, of course, that reasonable men, such as former President Herbert Hoover who said that communist spies and traitors utilizing the fifth amendment should be deprived of their right to vote,[197] do differ on the implications arising from its invocation. Numerous pronouncements by many liberals against the fifth amendment prior to its wholesale adoption by Communist Party members attest to this.

It is to be noted that the Supreme Court in recent 5-4 decisions has reaffirmed the right of a state to receive answers from its employees to questions dealing with Communist Party membership.[198] The Court,

192. Griswold, op. cit. supra note 191, at 19.

193. It has been held that a witness may deny under oath that he committed the crime being investigated and during the same interrogation properly invoke the privilege when questioned on details of the crime. People ex rel. Taylor v. Forbes, 143 N.Y. 219, 38 N.E. 303 (1894). See also United States v. Grunewald, 353 U.S. 391 (1957). The doctrine of waiver only applies where a man has incriminated himself, in which case he may be compelled to give details of the incriminating admission, provided that by so doing, he does not further incriminate himself. Rogers v. United States, 340 U.S. 367, 373 (1951).

194. Slochower v. Board of Educ., 350 U.S. 551 (1956).

195. See, e.g., Wolf v. Colorado, 338 U.S. 25, 28-29 (1949).

196. Cited with approval was Dean Griswold's work on the fifth amendment, op. cit. supra note 191, but ignored were Sidney Hook's devastating critique, op. cit. supra note 190, and Williams, Problems of the Fifth Amendment, 24 Fordham L. Rev. 19 (1955), which presents a fine rebuttal of current misconceptions of this subject.

197. "Many of these [communist] spies and traitors when exposed sought sanctuary for their infamies in the Fifth Amendment. Such a plea of immunity is an implication of guilt. Surely these people should not have the right to vote or hold office, for thereby they use these privileges of [our] enemies against the safeguards of freedom." N.Y. Herald Tribune, Aug. 11, 1954, p. 5, col. 4.

198. Lerner v. Casey, 357 U.S. 468 (1958); Beilan v. Board of Educ., 357 U.S. 399 (1958).

splitting hairs, concluded that if adverse action taken by the state is based on a refusal to answer, rather than on the invocation of the fifth amendment, then such action is proper. In view of these decisions, there is a possibility that the Court would uphold legislation, such as is recommended by the A.B.A. (Resolution 4(c)),[199] requiring, as a condition of employment, that federal government employees answer all questions on loyalty put to them by Congress or any federal agency. Employees who refuse to answer questions pertaining to their loyalty do not belong in the Government.

E. *Yates v. United States*

It is unlawful under the Smith Act[200] for any person (1) to advocate or teach the duty and necessity of overthrowing the Government of the United States by force and violence or (2) to organize any group of persons who so advocate or teach. In *Yates v. United States*,[201] Communist Party leaders were convicted of conspiring to commit these prohibited acts with the intention of causing the overthrow of the Government by force and violence as speedily as circumstances would permit. The conspiracy was alleged to have commenced in 1940 and continued on through the date of the indictment in 1951.

The trial court had instructed the jury that the word "organize" includes " 'the recruiting of new members and the forming of new units, and the regrouping or expansion of existing clubs, classes and other units of any society, party, group or other organization.' "[202] The trial court also instructed the jury that the Smith Act would be violated if a person, with the specific intent to cause or bring about the overthrow and destruction of the Government by force and violence as speedily as circumstances would permit, advocated the necessity and duty of such overthrow.[203]

The Supreme Court held both instructions were erroneous and awarded new trials to nine defendants, acquitting the remaining five.[204]

1. The "Organizing" Provision

The Court held that the "organizing" provision of the Smith Act is limited to acts involving the initial organization of a seditious group and not to any activities thereafter; and ruled that inasmuch as the Com-

199. A.B.A. Resolutions at 408.

200. 18 U.S.C. § 2385 (1952).

201. 354 U.S. 298 (1957).

202. Id. at 304.

203. Id. at 313-14 n.18.

204. In his dissent, Mr. Justice Clark stated that this was the first time in history that the Supreme Court had ever ordered an acquittal solely on the facts. 354 U.S. at 346.

munist Party had been reorganized in 1945, a 1951 indictment had been barred by the statute of limitations in 1948.[205]

The Smith Act, passed in 1940, was aimed particularly at the Communist Party. Since the United States Communist Party was originally organized in 1919, under the Court's interpretation, the organizing provision from the outset thus had no application to the Communist Party. Assuredly this was not the intention of Congress. The Court, admitting that the legislative history of the Smith Act shows that "concern about communism was a strong factor,"[206] attempted to demonstrate that this particular provision of the Act was not written with reference to the Communist Party by quoting a 1935 statement of Representative John W. McCormack which, on the contrary, would indicate clearly that the bill purported to include communists, but not only communists.[207]

The Court dismissed dictionary definitions of the word "organizing" because they show "the term is susceptible of both meanings attributed to it by the parties here."[208] The Government, of course, did not contend that the term was not susceptible of also meaning "establish," "found" or "bring into existence," (as contended by the defendants),[209] but maintained that this was not the only meaning of the word.

The *Yates* interpretation of the "organizing" provision of the Smith Act has virtually stopped all activity by the Department of Justice under this section.[210] If Communist Party subversives are to be effectively prosecuted, it is vital that Congress adopt the A.B.A.'s recommendation (Resolution IV(a)) and amend the Smith Act to define "organize" as including recruitment and other organizational activities.[211]

2. The "Advocacy" Provision

The Court held that advocacy of the forcible overthrow of the Government is not a violation of the Smith Act if it is "divorced from any

205. Id. at 310-12.

206. Id. at 307.

207. "'And by the way, this bill is not alone aimed at Communists; this bill is aimed at anyone who advocates the overthrow of Government by violence and force.'" Ibid. See Hearings on H.R. 4313 and H.R. 6427 Before a Subcommittee of the House Committee on the Judiciary, 74th Cong., 1st Sess., ser. 5, at 3 (1935). The Court completely disregarded a later statement made by this same legislator in 1939 during a debate on the Act: "[A] communist is one who intends knowingly or willfully to participate in any actions, legal or illegal, or a combination of both, that will bring about the ultimate overthrow of our Government. He is the one we are aiming at. . . ." 84th Cong. Rec. 10454 (1939).

208. 354 U.S. at 305-06.

209. Id. at 304

210. Testimony of Lawrence E. Walsh, Deputy Attorney General, Department of Justice. Senate Hearings at 407.

211. A.B.A. Resolutions at 108

effort to instigate action to that end."[212] Specifically, the Court ruled that it is not enough to advocate the necessity of violent overthrow of the Government and to advocate that it is one's duty to violently overthrow the Government, even though the advocator intends by his advocacy to violently overthrow the Government. The advocacy must be accompanied by an urging "to do something, now or in the future."[213] Anything short of this, the Court ruled, was merely advocacy of an "*abstract doctrine*."[214]

Following the Court's reasoning, if an individual, for the purpose of having a police chief assassinated, stated that the assassination of the police chief was necessary and further that it was the duty of his listeners to assassinate the police chief, he would not be advocating action, but would be merely advocating "an abstract doctrine," and therefore, would be doing nothing criminal. Could it be said that the police chief would be unreasonable in concluding that the advocator had seriously jeopardized his well-being?

Indeed, as the Court conceded, the distinction between advocacy in the abstract with evil intent and advocacy which incites to action is "often subtle and difficult to grasp."[215]

Earlier, in *Dennis v. United States*,[216] in upholding the Smith Act, the Court ruled that the constitutional test was whether or not the defendant's advocacy had created a "clear and present danger"[217] of overthrowing the Government. Yet, in the *Yates* case, the Court remained silent as to this principle. In any event, it is clear that the Court in *Yates* did not override the ruling of the *Dennis* case that the advocacy need not stir one to immediate action to be deemed criminal.[218] Rather, the Court, by some peculiar reasoning, interpreted the *Yates* trial court as permitting the defendants to be convicted in the absence of any incitement to action, present or future.[219] The Court stated that the *Yates* trial judge was in error in not giving the *Dennis* charge (which the Government had requested that it do), although it would appear that in substance the charges were the same.

212. 354 U.S. at 318.

213. Id. at 325.

214. Id. at 312.

215. Id. at 326.

216. 341 U.S. 494.

217. Id. at 503.

218. 354 U.S. 298, 320-21, 324-25

219. "'The Supreme Court did not repudiate the Smith Act but in interpreting it performed an extraordinary feat of psychological acrobatics. This feat consisted of a gossamer-fine distinction between 'advocacy of abstract doctrine' and 'advocacy directed at promoting unlawful action.' . . . And so we come back to our original question—that of the relationship of the idea (whether qualified as 'abstract' or not) to the act. . . . Who is

Legislation to clarify this issue is in order. The A.B.A.'s recommendation (Resolution IV(b)) is that the Smith Act be amended to make it a crime to advocate intentionally the violent overthrow of the Government.[220] The Court has already stated that legislation punishing advocacy without incitement would be in a clearly marked "constitutional danger zone."[221] Nevertheless, this pronouncement would not affect the propriety of amending the Smith Act to make it perfectly clear that intentional advocacy of any action, present or future, to overthrow the Government is criminal. Such an amendment would eliminate any future doubts or problems revolving about "subtle and difficult" distinctions in this area.[222]

F. *United States v. Witkovich*

An alien against whom a final order of deportation has been outstanding for over six months is, pending eventual deportation, subject to supervision under regulations prescribed by the Attorney General.[223] Such regulations may require the alien to give information under oath "as to his habits, associations and activities," and other matters that the Attorney General determines to be fit and proper; refusal to do so is a crime.[224]

The defendant, who had been under a deportation order for over six months, was indicted for refusing to answer questions put to him by the Attorney General under this statute, including queries as to whether he was presently a member of the Communist Party and had attended Communist Party meetings since the issuance of his deportation order.

Despite plain statutory language, the Supreme Court ruled that the Attorney General was entitled to interrogate an alien only as to those matters which would reflect on the latter's availability for deportation; and questions concerning Communist Party activity were not in this category.[225]

In justifying its strained construction of the statute, the Court indicated that it might be unconstitutional to "inhibit" the subversive

capable of drawing the fine distinction between the state of mind of one who teaches the commission of a crime as a mere 'abstract principle' . . . and the state of mind of one who . . . instigates its commission?'" Editorial comment of the American Journal of Psychiatry as quoted in the National Review, March 15, 1958, p. 247.

220. A.B.A. Resolutions at 408.

221. 354 U.S. at 319

222. The Department of Justice contends that such amendatory legislation is not needed. See Senate Hearings at 402-08.

223. 66 Stat. 208 (1952), 8 U.S.C. § 1252(d) (1952).

224. 66 Stat. 208 (1952), 8 U.S.C. § 1252 (1952).

225. 353 U.S. 194 (1957)

activities of an alien who has been ordered deported for such activities.[226] Yet, the Attorney General merely sought information as to the alien's Communist Party activities in order to determine the nature of the supervision, if any, that might be required. It is difficult to understand how imposition of any restrictions on an alien's subversive activities would be unconstitutional in view of Congress' broad powers concerning aliens.[227] If Congress may deport aliens, have them fingerprinted and jailed, then why not a congressional right to restrain their activities?[228]

The *Witkovich* decision thus places the alien under an order of deportation in a better position than other aliens who must report to the Attorney General when required to do so. In other words, the Attorney General may require an alien to report and answer questions concerning communist activities, but once the alien is ordered deported, he may not be required to so report. It is evident that Congress intended the Attorney General to supervise alien deportees whose past records reveal dangerous activity. Communist nations frequently refuse re entry to their nationals in order to enable them to continue their subversive activities in the United States, and Congress undoubtedly had this in mind in passing Section 1252(d).

Legislation permitting the Attorney General to restrict and prohibit the subversive activities of an alien awaiting deportation, and to interrogate him concerning the same, as recommended by the A.B.A. (Resolution IV(d)), is imperative as an additional safeguard for our internal security.[229]

G. *Bonetti v. Rogers*

Petitioner, an alien, arrived in the United States in 1923, was a member of the Communist Party, and in 1937 left the United States, abandoning all rights of residence. In 1938 he was readmitted to the United States; there was no evidence that he was thereafter a Communist Party member. The Government sought to deport Bonetti under a statute providing in effect that an alien is deportable if he becomes a communist at any time after his "entering" the United States.[230]

226. Id. at 201.

227. See 353 U.S. at 204-05 (Clark, J., dissenting). In Carlson v. Landon, 342 U.S. 524 (1952), the Court approved detention of an alien during the determination of his deportability.

228. See, e.g., 66 Stat. 208 (1952), 8 U.S.C. § 1252(a) (1952) (apprehension and deportation of aliens); 66 Stat. 224 (1952), 8 U.S.C. § 1302 (1952) (registration and fingerprinting of aliens).

229. A.B.A. Resolutions at 408

230. Anarchist Act of 1918, ch. 186, § 1, 40 Stat. 1012, as amended, ch. 451, 41 Stat. [illegible] (1920), as amended, ch. 450, § 23(a), 54 Stat. 673 (1940), as amended, ch. 1024, [illegible](a), 64 Stat. 1008 (1950), repealed by Immigration and Nationality Act of 1952, 66

Stating that the language of the statute was ambiguous, the Court ruled that the word "entering" referred to an "adjudicated lawful admission"[231] which, for Bonetti, was the 1938 entry since he had previously abandoned all his rights under the 1923 entry.[232]

The dissenting opinion of Mr. Justice Clark[233] very convincingly establishes that it was Congress' intent that an alien should be deported if he became a Communist Party member after *any* entry. Otherwise, an alien could defeat the purpose of the Act merely by leaving the country and re-entering. In *United States ex rel. Volpe v. Smith*,[234] the Court had earlier held that the word "entry" included "any coming of an alien from a foreign country into the United States whether such coming be the first or any subsequent one."

The majority opinion acknowledged that the effect of its decision is limited since as of June 27, 1952, any alien who has ever been a Communist Party member is excludable, and if he enters when excludable, he is deportable even though not deportable if he had not left the country.[235]

However, the Court's decision seems to give an unmerited advantage to an alien who, by design or chance, left the United States after discontinuing membership in the Communist Party. The alien who remains in the United States after leaving the Communist Party is deportable, but the traveling alien is not. The A.B.A.'s recommendation that legislation be enacted to provide that aliens who became communists at any time subsequent to their entry into the United States be deported (Resolution IV(d)) is thus in order.[236]

H. *Watkins v. United States*

The Supreme Court reversed the contempt conviction of Watkins, who, as a witness, had refused to reveal to the House Un-American Activities Committee whether certain individuals had been known to him as members of the Communist Party.[237] Watkins had previously

Stat. 279 (1952), 8 U.S.C. §§ 132—137-10 (1952). However, the order of deportation here was issued prior to the date the Act of 1952 became effective. See 356 U.S. at 695 n.6.

231. 356 U.S. at 696-97.

232. Id. at 698.

233. Id. at 700-03.

234. 289 U.S. 422, 425 (1933)

235. 356 U.S. at 698-99.

236. A.B.A. Resolutions at 408. An argument proffered against such legislation is that it would deter alien ex-communists from cooperating with the Government since to do so might result in their deportation. See testimony of Robert Fisher, Senate Hearings at 249-50.

237. 35 U.S. 178 (1957)

admitted cooperating with the Communist Party but denied ever having been a card-carrying member.[238]

Watkins refused to answer the Committee's questions because, as he claimed, no "law in this country requires me to testify about persons who may in the past have been Communist Party members or otherwise engaged in Communist Party activity but who to my best knowledge and belief have long since removed themselves from the Communist movement."[239] Relying on the first amendment, he charged that the questions were not relevant to the work of the Committee, which had no right "to undertake the public exposure of persons because of their past activities."[240]

The Supreme Court held that a witness need not answer questions posed by a congressional committee unless the subject matter of the investigation appears with "undisputable clarity" or the committee describes "what the topic under inquiry is and the connective reasoning whereby the precise questions asked relate to it."[241] Since the Court ruled that the subject under inquiry had not been elucidated, Watkins, therefore, did not have to answer the Committee's questions.

Watkins himself, however, never maintained that he was ignorant of the subject matter of the investigation. He was willing to talk about his own activities and those of people he believed still in the Communist Party, but based his refusal to answer the questions in issue on the ground that no law required him to identify past Communist Party associates. The Supreme Court did not deal with this objection.

The Court also stated that due process requires that any element of a criminal offense be expressed with clarity, and that the "'vice of vagueness' must be avoided here as in all other crimes."[242] However, this rule applies to the definition of a crime; there is nothing vague about the statute involved in *Watkins* which renders criminal a refusal to answer any query pertinent to the subject under inquiry. Furthermore, pertinency or relevancy has always been considered a question of law for a court to decide, and not a question of fact. Congressional committees were presumed to be asking pertinent questions, and a witness who refused to answer did so at his own peril.[243]

Requiring an investigator to explain to a witness "the connective reasoning" whereby the question propounded relates to the topic under inquiry evinces little knowledge of the process of fact-finding. If an

238. Id. at 183.

239. Id. at 185.

240. Ibid.

241. Id. at 214-15.

242. Id. at 209.

243. Sinclair v. United States, 279 U.S. 263, 299 (1929).

interrogator must explain with detailed reasoning why each question objected to is pertinent to the inquiry, he may just as well quit before starting. Such explanations would not only hinder and delay the questioning, but would destroy any effective investigative technique. For an interrogator to reveal specifically what he has in mind would often cue a hostile witness to adopt evasive tactics which he otherwise might not employ. Furthermore, since investigators are looking for information, their questions, of necessity, must frequently be of an exploratory nature. It is unreasonable to expect them to pinpoint in advance the areas in which "paydirt" may be struck. As Mr. Justice Frankfurter contended in 1924, "advance rigidities" would "make effective investigation almost impossible."[244]

Besides holding that the House Un-American Activities Committee's action in the *Watkins* case was improper, the Court, in very strong language, expressed its belief that no investigation by the Committee would be valid. The Court maintained that instructions by the House of Representatives to an investigating committee must "spell out that group's jurisdiction and purpose with sufficient particularity,"[245] and indicated that the resolution authorizing the House Un-American Activities Committee was too vague. The Court said it would "be difficult to imagine a less explicit authorizing resolution. Who can define the meaning of 'un-American'?"[246] So emphatic was the Court's language that the *Watkins* case has been interpreted as having turned on the "readily demonstrable proposition that the committee's investigatory authorization was unconstitutionally broad."[247]

The Court declared that it was not its function to prescribe rigid rules for congressional drafting of resolutions establishing investigating committees, averring that this was a matter "peculiarly within the realm of the legislature, and its decisions will be accepted by the courts up to the point where their own duty to enforce the constitutionally protected rights of individuals is affected."[248] In effect, the Court is saying to Congress: "You go ahead and make your own rules, and we won't interfere unless we think we should interfere."

In the course of its opinion, the Court made many unnecessary, inaccurate, and poorly reasoned statements. For example, it stated: "Investigations conducted solely for the personal aggrandizement of the investigators or to 'punish' those investigated are indefensible . . . ,"[249] and contended that "to expose for the sake of exposure" is improper.[250] Yet there was not a shred of evidence of any motive of personal aggrandizement on the part of the investigators, of punishment of a witness, or of exposure for exposure's sake. The Court apparently felt that here was an opportunity to express its own personal views regarding congressional investigations of communism.

In attempting to contrast our congressional committees with the Royal Commissions of Inquiry, the Court stated that the latter's "success in fulfilling their fact-finding missions without resort to coercive tactics is a tribute to the fairness of the process to the witnesses and their close adherence to the subject matter committed to them."[251] The Court thus demonstrated its ignorance of the operations of such commissions. Among other things, a royal commission investigating subversion has the power to (1) arrest and jail witnesses; (2) hold witnesses without bail and incommunicado for many days and until after they are questioned; (3) compel witnesses to testify and impose sanctions for refusing to testify; (4) search witnesses' homes and seize their papers; (5) forbid a witness to have his lawyer present at a hearing; and (6) require all concerned including witnesses to take an oath of secrecy.[252]

Congressional committees, of course, have none of these powers. Furthermore, "royal commissions are not subject to or under the control of the Courts, Parliament or the Cabinet, and a commission is the sole judge of its own procedure."[253]

244. Frankfurter, Hands Off the Investigation, New Republic, May 21, 1924, p. 329. In condemning the proposition that a congressional committee must give notice of the purpose of its inquiry, James A. Landis wrote: "That . . . [the committee] must announce a precise choice before adducing evidence necessary for a proper judgment, is to insist upon leaping before looking, to require of senators that they shall be seers." Landis, Constitutional Limitations on the Congressional Power of Investigation, 40 Harv. L. Rev. 153, 221 (1926).

245. 354 U.S. at 201.

246. Id. at 202. The Court went on to assert that "no one could reasonably deduce from the charter the kind of investigation that the Committee was directed to make." Id. at 204.

247. Pritchett, The Political Offender and the Warren Court 39 (1958). Yet, the authorizing resolution of the House Un-American Activities Committee is no broader than that of many other congressional committees. The Committees on the Armed Services have been given jurisdiction over "common defense generally." Legislative Reorganization Act of 1946, ch. 753, §§ 102, 103, 60 Stat. 815, 824. The Senate and House Committees on Interstate and Foreign Commerce have jurisdiction over "interstate and foreign commerce generally." Legislative Reorganization Act of 1946, ch. 753, §§ 102, 103, 60 Stat. 817, 826

248. 354 U.S. at 205.

249. Id. at 187.

250. Id. at 200.

251. Id. at 192.

252. Report of the Canadian Royal Commission, June 27, 1946, pp. 649-84, and English authorities cited therein, and the Report of the Australian Royal Commission, August 22, 1955, pp. 437-53, summarized in the testimony of Dean Clarence Manion in 1958 Senate Hearings at 585-86.

253. Testimony of Dean Clarence Manion, 1958 Senate Hearings at 586.

The Court was critical of investigators who revert "to the past to collect minutiae on remote topics, on the hypothesis that the past may reflect upon the present."[254] But certainly the past often reflects, and frequently is, the only key to the present.

Contrary to the Court's insinuations, the records of the Senate Internal Security Subcommittee and the House Un-American Activities Committee have indeed been those of accomplishment,[255] and they have well merited the praise tendered by the A.B.A. (Resolution V).[256]

The Court stated that the decade following World War II saw the emergence of a type of congressional inquiry unknown before in American history, and a "new phase of legislative inquiry [that] involved a broad-scale intrusion into the lives and affairs of private citizens."[257] Thus, questioning a man about communist activity is a "broad-scale intrusion" into his life and affairs, but ruthlessly questioning a man about his private business affairs, as was done in pre-World War II inquiries, does not fall into this category. While the Court laments that persons named before congressional committees as Communist Party members are placed in the "glare of publicity,"[258] one need only recall Mr. Justice Black's earlier statement that unscrupulous business men should be so exposed to wonder at the Court's present concern.[259]

The Court also indicated that because Communist Party members have been exposed to public stigma, people who might otherwise advance unorthodox views would not do so for fear of like treatment in the future.[260] The Court held congressional investigators responsible for initiating this reaction. Again, one might ask what is so wrong about

254. 354 U.S. at 204.

255. Some twenty-four new laws were enacted by Congress and forty-eight revisions in administrative regulations were effected as the result of the recommendations of the Senate Subcommittee on Internal Security. Staff of Legislative Reference Service of the Library of Congress, 85th Cong., 2d Sess., Legislative Recommendations by the Senate Internal Security Subcommittee and Subsequent Action Taken by the Congress and the Executive Agencies (Comm. Print 195). The 1958 report of the House Un-American Activities Committee reveals that thirty-five legislative measures sponsored by the Committee had been enacted into law and thirteen policy recommendations had been implemented by the executive branch of the Government. N.Y. Times, March 8, 1959, p. 38, cols. 3-4.

256. See A.B.A. Resolutions at 409-10.

257. 354 U.S. at 195.

258. Id. at 197.

259. See p. 254. Mr. Justice Black's words returned to haunt him in the majority opinion of Barenblatt v. United States, 360 U.S. 109, 112 (1959). Black dissented in this case.

260. 354 U.S. at 197-98.

discouraging people from joining organizations which seek to enslave the whole world?

A friendly analysis explains that what the Court has done in *Watkins* "is to try a little psychological warfare on Congress, to see whether it cannot be frightened or shamed into taking a more responsible view of its powers."[261] It would seem that the warfare was more annihilatory than psychological.

Fortunately, in *Barenblatt v. United States*,[262] decided by a divided Court after the A.B.A. resolutions were passed, the deadly direction of the *Watkins* case was completely reversed. In upholding the contempt conviction of a witness appearing before the House Un-American Activities Committee, the Court, instead of deriding congressional investigators, emphasized the threat of world communism, admitting that it would have to ignore international affairs to assume that the Communist Party was an ordinary political party. Most importantly, the Court upheld the authority of the House Un-American Activities Committee to investigate communism.[263] There would now seem to be no need to rewrite the Committee's basic authorizing resolution, as recommended by the A.B.A. (Resolution II) before the reversal of *Watkins*.[264] Since the *Barenblatt* case also delineated less rigid requirements for elucidating the pertinency of the Committee's questions,[265] there is thus also less need for the A.B.A. recommendation that each witness be furnished with a copy of the Committee's basic authority along with his subpoena (Resolution III).[266]

I. *Sweezy v. New Hampshire*

Sweezy was convicted of contempt for refusing to answer certain questions concerning university lectures he had delivered and his knowledge of the Progressive Party. The questions were posed by the Attorney General of New Hampshire, who had been appointed by the state legislature as a one-man committee to investigate subversion. In affirming the contempt conviction,[267] the Supreme Court of New Hampshire had held that the Attorney General was operating within his

261. Pritchett, The Political Offender and the Warren Court 47 (1958).

262. 360 U.S. 109 (1959).

263. Id. at 117-18.

264. See A.B.A. Resolutions at 407-08.

265. 360 U.S. at 123-25. The Court pointed out that the subject matter of the instant inquiry had been identified at the outset as an investigation into communist infiltration in the field of education. In view of the submission of a memorandum of constitutional objections prepared by Barenblatt, the latter must have been aware of this subject. Id. at 116-22.

266. See A.B.A. Resolutions at 408

267. 100 N.H. 103, 121 A.2d 783 (1956).

authority since the questions relating to the defendant's lectures might tend to indicate whether he was a subversive person; and the questions concerning the Progressive Party might reveal it to be a subversive organization.

In reversing the conviction,[268] the United States Supreme Court held that the discretion granted the Attorney General to investigate subversion was so broad that it was impossible for the Court to determine whether or not the state legislature was interested in the information which the Attorney General had sought.[269] It was of no consequence to the Court that the legislature had already twice ratified the Attorney General's conduct by authorizing a continuation of his investigation in the same "form" and "manner."[270] Since the highest court of New Hampshire had already ruled that the Attorney General was directed to inquire as he did, the Supreme Court should have been bound by this finding, for it is improper for the Court to overturn state action in the absence of a deprivation of constitutional rights.

The Court again made a number of statements extraneous to its ruling. It said: "We believe that there unquestionably was an invasion of petitioners' liberties in the areas of academic freedom and political expression—areas in which government should be extremely reticent to tread."[271] The Court attempted no definition of "academic freedom."

The Court also proclaimed that "to impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation."[272] This reasoning suggests that although those who teach the children of the nation exercise a vital function, no inquiry should be made as to their qualifications or the contents of their teaching. The Court offers no sound reason why "intellectual leaders" should be free of the reasonable restraints imposed upon all other men. Instead, it uttered a very ominous threat for future state investigations of subversion in education: "We do not now conceive of any circumstances wherein a state interest would justify infringement of rights . . ."[273] in the areas of "individual political freedom"[274] and "freedom in the community of American universities."[275]

268. 354 U.S. 234 (1957).
269. Id. at 253-54.
270. Id. at 269 (dissent). As Professor Roger C. Cranton observed, "to say that the State has not demonstrated that it wants the information seems so unreal as to be incredible." Quoted in What 36 State Chief Justices Said About the Supreme Court, U.S. News and World Report, Oct. 3, 1958, p. 97.
271. 354 U.S. at 250.
272. Ibid
273. Id. at 25[illegible]
274. Id. at 250.
275. Ibid

Fortunately, this threat has been diminished, and the effect of the *Sweezy* case minimized to a considerable extent, by the recent decisions in the *Barenblatt* case and *Uphaus v. Wyman*,[276] which sustained a contempt conviction arising from the same investigation of the New Hampshire Attorney General as had been involved in the *Sweezy* case. Uphaus refused to supply the guest list of a summer camp run by the New Hampshire World Fellowship Center, of which he was executive director. The Court declared that the nexus between the World Fellowship Center and subversive activities disclosed by the record justified the Attorney General's investigation. It held that the governmental interest of self-preservation "outweighs individual rights in an associational privacy . . ."[277] and ruled that *Pennsylvania v. Nelson*[278] did not preclude state investigation and prosecution of sedition against the state itself.[279]

The *Barenblatt* case specifically held that the power of Congress to investigate the Communist Party is not to be denied because the field of education might be involved,[280] for Congress is not "precluded from interrogating a witness merely because he is a teacher. An educational institution is not a constitutional sanctuary from inquiry into matters that may otherwise be within the constitutional legislative domain merely for the reason that inquiry is made of someone within its walls."[281]

J. *Pennsylvania v. Nelson*

The defendant, an acknowledged member of the Communist Party, had been convicted under the Pennsylvania Sedition Act of knowingly advocating the overthrow of the Government of the United States by force and violence. The United States Supreme Court, affirming[282] the Supreme Court of Pennsylvania, which reversed the conviction,[283] held that the Smith Act of 1940 had superseded the Pennsylvania Sedition Act and based its decision on three grounds: (1) that Congress intended to be the exclusive occupant of the field of sedition; (2) that federal interest is so dominant in the field of sedition that it precludes state laws on the same subject; and (3) enforcement of state sedition acts presents a serious danger of conflict with the administration of the federal program.[284]

276. 360 U.S. 72 (1959).
277. Id. at 80.
278. 350 U.S. 497 (1956).
279. 360 U.S. at 76.
280. 60 U.S. at 129.
281. 7[illegible] at 112
282. 350 U.S. 497 (1956). Thirty-five states unsuccessfully petitioned the Court to reconsider its decision. Testimony of Frank B. Ober, Senate Hearings at 64.
283. Commonwealth v. Nelson, 377 Pa. 58, 104 A.2d 133 (1954).
284. 350 U.S. at 502-10

1. Congressional Intent

The Court asserted that Congress intended to eliminate state prosecutions in the field of sedition,[285] but did not cite a single passage from any pertinent statutes indicating such an intention. Nor did the Court, in support of its position, refer to any hearings or reports of congressional committees, or any statements made by sponsors of pertinent bills, or any speeches delivered by members of Congress during the ensuing debates on the bills. No such references were made since all available evidence would have completely contradicted the Court. For example, during the debate on the Smith Act, its sponsor, Congressman Smith, declared that his bill "had nothing to do with state laws."[286] He is also on record as stating that Congress never "had the faintest notion of nullifying the concurrent jurisdiction of the respective sovereign states to pursue also their prosecutions for subversive activities."[287]

Section 3231 of Title 18, United States Code, of which the Smith Act is part, provides:

> The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.
>
> Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

The Supreme Court in *Sexton v. California*[288] had earlier interpreted this section as signifying that the states may enact concurrent legislation in the absence of explicit congressional intent to the contrary. Speaking for the majority in the *Nelson* case, Chief Justice Warren, ignoring altogether the *Sexton* decision, claimed that the paragraph preserving the states' jurisdiction merely limited the jurisdiction granted the federal courts.[289] He cited nothing to substantiate this conclusion.

The Court mentioned two cases[290] for the proposition that broad treatment of any subject within the federal power bars supplemental action by states, but both cases dealt with state legislation conflicting with a comprehensive federal regulatory scheme or plan. The Smith Act does not create any statutory or administrative regulations and "there is, consequently, no question as to whether some general con-

285. Ibid.

286. 84 Cong. Rec. 10452 (1939).

287. Quoted in Commonwealth v. Nelson, 377 Pa. 58, 90, 104 A.2d 133, 148-49 (1957) (dissent). The Court also ignored the fact that state sedition statutes were already existing when the Smith Act was passed and that some forty-two were in existence at the time of its decision. Yet Congress at no time took steps to limit state action in this area. See 350 U.S. at 514-15 n.4 (dissent).

288. 189 U.S. 319, 324-25 (1903).

289. 350 U.S. at 501.

290. Rice v. Sante Fe Elevator Corp., 331 U.S. 218 (1947); Charleston & W.C. Ry. v. Varnville Furniture Co., 237 U.S. 597 (1915).

gressional regulatory scheme might be upset by a coinciding state plan."[291]

2. The "Dominant" Federal Interest in the Field of Sedition

The Court held that federal interest in internal security is so dominant as to bar state laws.[292] Again, there are no continuing regulations emanating from the Smith Act with which state sedition laws might interfere, as could be true, for example, in a situation involving federal regulation of foreign affairs or coinage.

A clear-cut precedent for state sedition statutes is found in *Gilbert v. Minnesota*[293] where the federal interest in raising armies did not prevent the Court from allowing Minnesota to punish persons who interfered with enlistments, even though a comprehensive federal criminal law prohibited identical activity. The *Gilbert* Court maintained that a state "has power . . . to restrain the exertion of baleful influences against the promptings of patriotic duty to the detriment of the welfare of the Nation and State. To do so is not to usurp a National power, it is only to render a service to its people . . . ."[294]

To circumvent this precedent, Chief Justice Warren asserted that the *Gilbert* Court had construed the Minnesota statute as a local police measure rather than as one relating to the raising of armies for national defense.[295] A reading of the case clearly shows, however, that the *Gilbert* Court had interpreted the statute only alternatively and that its main holding was that states have a concurrent interest in, and therefore a concurrent jurisdiction over, matters dealing with the armed forces.

The argument for invalidating a state statute in *Gilbert* was much stronger than in the *Nelson* case, inasmuch as the Constitution expressly gives Congress the power to raise armies. No such exclusive power is granted with respect to sedition.

3. The Danger of Conflict

As sole support for its claim that state sedition acts present a serious danger of conflict with administration of the federal program, the Court cited statements by President Roosevelt and by J. Edgar Hoover which

291. 350 U.S. at 514 (dissent). See also Kelly v. Washington, 302 U.S. 1 (1937), where the Court in upholding a state statute stated: "The principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot be reconciled or consistently stand together." Id. at 10.

292. 350 U.S. at 504.

293. 254 U.S. 325 (1920).

294. Id. at 331.

295. 350 U.S. at 501.

urged, in substance, that any espionage or sabotage information obtained by the states should be turned over promptly to the F.B.I.[296] These statements, however, merely reflect the necessity of cooperation between the states and the federal government which J. Edgar Hoover has always favored.[297]

The Court completely disregarded arguments proffered by the Department of Justice in an amicus curiae brief which pointed out that administration of existing state sedition laws had yet to impair federal enforcement of the Smith Act.[298] The Department counseled that:

> The significance of this absence of conflict in administration or enforcement of the federal and state sedition laws will be appreciated when it is realized that this period has included the stress of wartime security requirements and the federal investigation and prosecution under the Smith Act of the principal national and regional Communist leaders . . . . [T]he Attorney General of the United States recently informed the attorneys general of the several states . . . that a full measure of federal-state cooperation would be in the public interest.[299]

Thus we have the Court overturning a state statute partly because it feared a possible conflict in the administration of the federal and state statutes, even though those charged with their administration had no such apprehension. Clearly the Court has interfered where it should have not.

As the *Nelson* decision remains objectionable, Congress should act on the A.B.A.'s recommendation that legislation be passed embodying Congress' intention that state statutes proscribing sedition against the United States shall have concurrent enforceability (Resolution I).[300] It is of great importance to the nation that all available competent manpower be utilized for the detection and prosecution of subversion.

296. Id. at 506.

297. In 1936, Hoover declared: "The Federal Bureau of Investigation believes that the secret of crime eradication lies not in a national police force but in solidarity and the combined linking of all law enforcement agencies. It believes in a close-knit cooperation, each unit capable of handling its [illegible] problems, but also, when necessary, of mobilizing its efforts in a concerted drive against the criminal element of this country." Quoted in Whitehead, The F.B.I. Story 150 (1956).

298. Quoted in N.Y. Times, Sept. 15, 1955, p. 19, cols 1-4. See also 350 U.S. at 518.

299. Brief for the Department of Justice as Amicus Curiae, pp. 30-31. Deputy Attorney General Lawrence E. Walsh recently testified that whatever conflicts exist between state and federal law enforcement agencies are of a minor nature, adding that there "aren't enough people to do the work." Senate Hearings at 402.

300. A.B.A. Resolutions at 407. In a later case, Uphaus v. Wyman, 360 U.S. 72, 76 (1959), the Court held that the Nelson decision had not "stripped the States of the right to protect themselves," thus upholding state laws prohibiting seditious acts against the state itself. The Court referred to the Nelson case as holding precisely that the Smith Act [illegible] enforceability of the Pennsylvania Sedition Act which proscribed the same [illegible] knowing advocacy of the overthrow of the United States by fear and violence [illegible]" 360 U.S. at 76.

V. The Effect of Supreme Court Decisions on Internal Security Efforts and Communist Party Activities

The Committee on Federal Legislation of the New York City Bar Association reports that the A.B.A. Special Committee "offers no support for its charges" that recent Supreme Court decisions have "encouraged an increase in Communist activity in the United States or . . . have caused a 'paralysis of our internal security.' "[301] On the contrary, there is abundant evidence to justify the conclusions of the A.B.A. Committee.

Fifteen Smith Act conspiracy indictments were filed prior to the *Yates* case. Out of 30 pre-*Yates* defendants who went to trial, 28 were convicted, and each conviction was affirmed on appeal. Of 84 post-*Yates* defendants who went to trial, 76 were convicted, but all convictions were reversed on appeal. Adding the indictments dismissed against 19 defendants who were not tried and that against one defendant who had a "hung" jury makes a total of 96 defendants who directly benefited from the *Yates* decision. Of these 96, all have been freed, except six who have been retried and convicted in Denver and whose appeal is pending, and six defendants in Cleveland who have yet to be retried. The trial time spent by the Government in cases reversed because of the *Yates* decision totals 4½ years. After all this time, to say nothing of the hours spent in preparation for trial, the net result of the *Yates* case is that 84 leaders of the Communist Party have gone scot-free and 12 more may well be on their way to freedom. The sentences that had been imposed on these freed Communist Party leaders total 312 years. It would indeed seem that our "security has been weakened" not only by putting back into circulation these leaders of the communist conspiracy, thus leaving them free to continue to work for the ultimate enslavement of the United States, but also by making further prosecutions an extremely hazardous venture. The *Yates* decision has in truth rendered the Smith Act almost unusable for the conviction of communists. No new Smith Act conspiracy indictments have been filed since it was handed down. Of course, not only have federal prosecutions been crippled, but the Court, through the *Nelson* case, has prevented the states from initiating similar prosecutions on the ground that the now emasculated Smith Act has pre-empted the field.

The following tabulation of the history of these indictments demonstrates that the Supreme Court has indeed made, as one federal judge has said, "a virtual shambles"[302] of the Smith Act.

301. 14 Record at 255.

302. Judge Richards H. Chambers in Fujimoto v. United States, 251 F.2d 342 (9th Cir. 1958).

	Indictments	Acquittals	Convictions	Ultimate Disposition
			Pre-Yates	
1.	New York (S.D.): 12 indicted (1 not yet tried, too ill)		11 on 10/14/49 (6½ mos. trial)	Aff'd, *United States v. Dennis*, 341 U.S. 494 (1951).
2.	Baltimore: 6 indicted		6 on 4/1/52 (2½ mos. trial)	Aff'd, *Frankfeld v. United States*, 198 F.2d 679 (4th Cir. 1952), *cert. denied*, 344 U.S. 922 (1953).
	New York (S.D.): 21 indicted* (1 died)	2	11 on 1/21/53 (9 mos. trial)	Aff'd, *United States v. Flynn*, 216 F.2d 354 (2d Cir. 1954), *cert. denied*, 348 U.S. 909 (1955).
			Post-Yates	
3.	New York (S.D.): 7 indicted (remaining from above 21*)	1	6 on 7/31/56 (3½ mos. trial)	Rev'd, *United States v. Jackson*, 257 F.2d 830 (2d Cir. 1958); all ordered acquitted.
4.	Los Angeles: 15 indicted (1 not tried, too ill)		14 on 8/5/52 (6 mos. trial)	Rev'd, *Yates v. United States*, 354 U.S. 298 (1957); 5 ordered acquitted; 9 new trials; indictments dismissed at Government's request, 12/2/57.
5.	Honolulu: 7 indicted		7 on 6/19/53 (7½ mos. trial)	Rev'd, *Fujimoto v. United States*, 251 F.2d 342 (9th Cir. 1958); all ordered acquitted.
6.	Pittsburgh: 6 indicted (1 not tried, too ill)		5 on 8/20/53 (9½ mos. trial)	Rev'd, *United States v. Mesarosh*, 352 U.S. 1 (1956); indictment dismissed at Government's request, 9/13/57.
7.	Seattle: 7 indicted (1 died)	1	5 on 10/10/53 (5½ mos. trial)	Rev'd, *Huff v. United States*, 251 F.2d 342 (9th Cir. 1958); all ordered acquitted.
8.	Detroit: 6 indicted		6 on 2/16/54 (3¼ mos. trial)	Remanded for reconsideration in light of *Yates*, *Wellman v United States*, 354 U.S. 931 (1957); *rev'd on retrial*, 25 F.2d 60[illegible] (6th Cir. 1958); indictment dismissed at Government's request, 9/16/58.

	Indictments	Acquittals	Convictions	Ultimate Disposition
			Post-Yates (continued)	
9.	St. Louis: 5 indicted		5 on 5/28/54 (4 mos. trial)	Rev'd, *Sentner v. United States*, 253 F.2d 310 (8th Cir. 1958); indictment dismissed at Government's request, 10/10/58.
10.	Philadelphia: 9 indicted		9 on 8/13/54 (4½ mos. trial)	Rev'd, *United States v. Kusma*, 249 F.2d 619 (3d Cir. 1957); 4 ordered acquitted; 5 new trials, 11/13/57; dictment dismissed at Government's request, 5/15/58.
11.	Cleveland: 11 indicted	5	6 on 2/10/56 (3 mos. trial)	Rev'd, *Brandt v. United States*, 256 F.2d 79 (6th Cir. 1958); awaiting new trial.
12.	New Haven: 8 indicted ("hung" jury on one def.)	1	6 on 3/29/56 (5 mos. trial)	Rev'd, *United States v. Silverman*, 248 F.2d 761 (2d Cir. 1957); all ordered acquitted; *cert. denied*, 355 U.S. 942 (1958).
13.	Denver: 7 indicted		7 on 5/25/55 (2 mos. trial)	Rev'd, *Bary v. United States*, 248 F.2d 201 (10th Cir. 1957); indictment re: 1 def. dismissed at Government's request, 1/27/59; 6 reconvicted, 3/12/59; appeal pending.
14.	San Juan, P.R. 11 indicted			Indictment dismissed at Government's request, 1/10/58.
15.	Boston: 7 indicted (1 died)			Indictment dismissed at Government's request, 11/8/57.

Another illustration of the paralysis of our internal security is seen in the results flowing from the decision in *Kent v. Dulles*.[303] The Court there held that the Secretary of State could not deny passports to communists or persons going abroad to further communist causes, or even require non-communist affidavits from applicants. John W. Hanes, Jr., Internal Security Administrator of the Bureau of Security and Consular Affairs of the State Department, has testified that since this decision,

303. 357 U.S. 116 (1958).

ome 1,150 persons with known communist affiliations have obtained assports, among them an increased number of hard-core communists.[304] Ie stated that "this is a gap in our defense which our enemies have not een slow to take advantage of. Since the Supreme Court decision in une 1958, many leading Communists have been able to travel to the oviet Union because of the easing of restrictions in the issuance of merican passports."[305] These communists are thus free to go abroad be instructed in plotting the downfall of the United States through ubversion, unhampered by any check on their activities. As discussed arlier, the *Witkovich* case prohibits the Attorney General from questoning subversive aliens who have been ordered deported as to their ubsequent subversive activities. Certainly our internal security has een weakened by these decisions.

The sweeping language of the *Watkins* case initially threatened to nd completely all effective congressional investigation of subversion. ecause of this decision, the investigations of the State Internal Seurity Subcommittee practically came to a standstill, while the House n-American Activities Committee operated under the severest handiap.[306] Fortunately, the *Barenblatt* case[307] has overruled *Watkins* in a umber of substantial ways, and it is to be hoped that the paralyzing estrictions of the latter will be eased.

To sum up briefly, the recent decisions of the Supreme Court have rippled our internal security efforts by, for example, rendering the mith Act ineffective, restricting prosecution of subversives by the states, ermitting subversives to travel abroad, preventing the supervision of ubversive aliens, and severely curtailing the power of Congress to nvestigate subversion.

Supreme Court decisions also have abetted an increase in communist ctivity in the United States. The *Yates* decision is hailed by a comunist leader as "the greatest victory the Communist Party ever had" nd as a case which would "result in the rejuvenation of the Communist arty in America."[308] J. Edgar Hoover has frequently attested to the ccuracy of this prophecy. In his year-end report to the Attorney eneral, he stated that the American Communist Party during 1957 'emerged from hiding with new confidence and determination,'" one

304. Testimony of John W. Hanes, Jr., Senate Hearings at 278.

305. Id. at 279.

306. See Rusher, Can Congressional Investigations Survive Watkins?, National Review, ept. 7, 1957, p. 201. Congressional investigations of communism are a vital need. As J. Edar Hoover has admonished: "[W]e may not learn until it is too late to recognize who he communists are, what they are doing, and what we ourselves, therefore, must do to defeat them." Foreword to Hoover, Masters of Deceit at vii (1958).

307. 360 U.S. 109 (1959).

308. Quoted in Gordon, Nine Men Against America 143 (1958).

reason for its increasing boldness being a continued success in "'invoking legal technicalities and delays.'"[309] Exploitation of Supreme Court decisions has, beyond any doubt, encouraged this increased Communist activity.

VI. Other Critics of the Court

The American Bar Association has not been alone in criticizing recent decisions of the United States Supreme Court. On August 23, 1958, meeting in Los Angeles, California, the Conference of State Chief Justices, in an unprecedented move, overwhelmingly approved a highly critical report which expressed grave concern over the Supreme Court's exercise of "almost unlimited policy making powers" and stated that recent decisions raised considerable doubt as to whether ours is a government of laws or of men.[310] Impelled to speak out to uphold "respect for law,"[311] the jurists, including the eminent Chief Judge of the New York Court of Appeals, Albert Conway, approved the following resolution:

> Resolved: . . . That this Conference hereby respectfully urges that the Supreme Court of the United States, in exercising the great powers confided to it for the determination of questions as to the allocation and extent of national and State powers, respectively, and as to the validity under the Federal Constitution of the exercise of powers reserved to the States, exercise one of the greatest of all judicial powers—the power of judicial self-restraint—by recognizing and giving effect to the difference between that which, on the one hand, the Constitution may prescribe or permit, and that which, on the other, a majority of the Supreme Court, as from time to time constituted, may deem desirable or undesirable, to the end that our system of federalism may continue to function with and through the preservation of local self-government.[312]

Judge Learned Hand of the Second Circuit Court of Appeals has scored the Supreme Court's encroachment on the legislative domain as "a patent usurpation" of power,[313] declaring that he never has been able to understand on what basis the Court asserted or could assert its notions of what was good for the community, "except as a coup de main."[314] One cannot "frame any definition that will explain when the Court will assume the role of a third legislative chamber and when it will limit its authority to keeping Congress and the states within their accredited authority."[315] Hand contends that "it certainly does not

309. Quoted in the National Review, Jan. 11, 1958, p. 29.

310. What 36 State Chief Justices Said about the Supreme Court, U.S. News & World Report, Oct. 3, 1958, pp. 92, 102.

311. Id. at 94.

312. Id. at 92.

313. Hand, The Bill of Rights 42 (1958).

314. Id. at 55.

315. Ibid.

accord with the underlying presuppositions of popular government to vest in a chamber, unaccountable to anyone but itself, the power to supress social experiments which it does not approve."[316] He decries judicial intervention in due process cases unless it appears that the statutes concerned are not "honest choices between values and sacrifices honestly appraised."[317]

Other jurists, state and federal, have been less restrained in voicing their disapproval of the Court.[318]

Professor Edwin S. Corwin, noted authority on constitutional law, has described the *Watkins* and *Yates* decisions as "irresponsible" and "vicious nonsense," and the *Cole* holding as "weird."[319] He asserts that "the country needs protection against the aggressive tendency of the Court."[320] Other legal experts have also criticized the recent propensities of a Supreme Court which, as one observer remarked, "has embarked upon a campaign to effectuate the personal preferences and philosophies of its members."[321]

316. Id. at 73.

317. Id. at 66.

318. For example, Honorable M. T. Phelps, senior justice of the Arizona Supreme Court declared: "It is the design and purpose of the Court to usurp the policy-making powers of the Nation. . . . I honestly view the Supreme Court, with its present membership and predilections, a greater danger to our democratic form of government and the American way of life than all forces aligned against us outside our boundaries." Quoted in 104 Cong. Rec. 12120 (daily ed. July 10, 1958). United States District Court Judge George Bell Timmerman has asserted the Supreme Court is a "'hierarchy of despotic judges that is bent on destroying the finest system of government ever designed.'" Quoted in N.Y. Times, July 26, 1957, p. 6, col. 7. Of the 128 out of 351 active federal judges who replied to questionnaires mailed them, 54% agreed that the Supreme Court "too often has tended to adopt the role of policy maker without proper judicial restraint." How U.S. Judges Feel About the Supreme Court, U.S. News & World Report, Oct. 24, 1958, p. 36. That criticism of the Supreme Court by other judges is nothing new may be seen in the following statement of Chief Justice Roane of Virginia concerning an opinion of John Marshall: "'A most monstrous and unexampled decision. It can only be accounted for by that love of power which history informs us infects and corrupts all who possess it, and from which even the upright and eminent judges are not exempt.'" Quoted in Freund, The Supreme Court Crisis, 31 N.Y.S.B. Bull. 66 (1959).

319. Letter from Edwin S. Corwin to the N.Y. Times, March 16, 1958, § 4, p. 10E, col. 6.

320. Ibid.

321. Testimony of Lloyd Wright, former Chairman of the Commission on Governmental Security, Senate Hearings at 461. Wright continued: "As Prof. Herbert Wechsler of the Harvard Law School recently demonstrated in his Oliver Wendell Holmes lectures at the school, the Court has failed to adhere to principle or to support its decisions with reason. Often its conclusions are handed down without opinion and sometimes without argument. Precedent is ignored and discarded, and decisions have been delayed and postponed in what appears to some observers to be a calculated campaign of waiting until public opinion is ripe to receive some new policy-making that would be admirable in a political statesman but ill-becomes a judge.

Conclusion

The present members of the Supreme Court have assumed an unrealistic attitude towards the Communist Party in the United States. They have ignored warnings of former Communist Party members, congressional committees, the F.B.I. and other governmental agencies, and have instead imposed their own views on the nation in the form of policy-making decisions beneficial to the Communist Party and its members. Particularly disturbing has been the Court's disregard of precedent. The frequency with which the Court has overturned previous decisions has led to great instability and confusion in the law. The value of the Supreme Court is greatly diminished when its decisions are predicated upon what five justices personally happen to feel is best for the country.

Furthermore, in its rulings involving communists, it is clear that the Court has frequently employed a double standard. Such use by the Court is typical of many liberal leaders of the nation. They have constantly switched principles depending on what happens to have been at stake. When the Court handed down rulings which they disfavored, these liberals were quick to condemn the Court, but now breathe fire at any hint of criticism.[322] It is illogical to maintain, as some now do, that legislation remedying Supreme Court decisions constitutes an attack on the Court as an institution.[323]

When members of the bar disagree with Supreme Court decisions, it is their right, and indeed their duty, to criticize these decisions and to suggest appropriate remedies. Hence, the report and resolutions of the American Bar Association are completely justified.

As pointed out by the Association, the remedy for poor decisions lies not in drastic curtailment of the Court's jurisdiction, but rather in enacting appropriate legislation to cure those statutory deficiencies which the

"Dean Erwin Griswold of the Harvard Law School has been an outspoken critic of some aspects of the internal security system, but he, too, has taken the Court to task for its current practice of delivering broad statements of law unrelated to the case before it, causing confusion and doubt.

"The efforts of the States to combat the peril of the Communist conspiracy have been weakened or destroyed by a line of decisions in the Supreme Court of the United States similar in all respects to the decisions which have emasculated the Federal security system." Id. at 461-62.

322. On the other hand, it may be said with some justification that there are conservatives who now strive to limit the jurisdiction of the Court who were among its strongest defenders when President Roosevelt attempted to pack it. See, e.g., Westin, When the Public Judges the Court, N.Y. Times, May 31, 1959, § 6 (Magazine), p. 16. When the progressives made their onslaught on the Court, "it was considered by the conservatives as little short of treason to question the legitimacy of . . . [the Court's] power or to criticize the manner of its exercise." 1 Boudin, Government by Judiciary 1 (1932).

323. See, e.g., testimony of Joseph L. Rauh, Jr., Senate Hearings at 214. See also state-

Court maintains exist. Many of the cases decided adversely to internal security efforts have turned on the Supreme Court's interpretation of a particular statute, thus leaving the door open for Congress to correct any erroneous construction. There are presently pending numerous bills in Congress which endeavor to rectify Supreme Court decisions on subversion. It is hoped that Congress will not procrastinate in passing the more imperative of these. It is realized, however, that even the passage of new legislation may not be sufficient to thwart a Supreme Court bent, for example, on destroying the basic purpose of the Smith Act. But, on the other hand, there is no guarantee that the Supreme Court would regard as constitutional legislation restricting its jurisdiction. A constitutional amendment is always available, if all else fails.

As in the past, changes in the composition of the Court are altering the trend of its decisions. Many of the A.B.A. proposals may no longer be necessary in view of the recent *Barenblatt* and *Uphaus* cases. The two latest additions to the Court, Justices Whittaker and Stewart, have generally sided with the Government in subversion cases, and it is possible that with other replacements many of the bases for the current complaints against the Court will soon disappear. At present, the Court is being criticized for its decisions in the field of subversion. Twenty years from now it will be excoriated for its pronouncements in some other area.

Sentiments expressed in another setting accurately reflect the views held by many today:

> Reluctant as we are to criticize our supreme judicial tribunal, we cannot but observe that when the members of that tribunal write long and varying opinions in handing down a decision, they must expect that intelligent citizens of a democracy will study and appraise these decisions. . . . [Traditional] . . . sanctions of our law, life and government are challenged by a judicial propensity which deserves the careful thought and study of lawyers and people. . . . [If the Supreme Court's philosophy] . . . is to prevail in our Government and its institutions, such a result should, in candor and logic and law, be achieved by legislation adopted after full, popular discussion and not by the judicial procedure of an ideological interpretation of our Constitution.
>
> We therefore hope and pray that . . . novel [interpretations] . . . adopted by the Supreme Court will in due process be revised. To that end we shall peacefully and patiently and perseveringly work.[324]

324. Statement of the American Hierarchy, Nov. 20, 1948, in Catholic Mind, Jan. 1949, pp. 58, 62-64.

1 } Mr. Nease
1 - Mr. Belmont
1 - Mr. Baumgardner
1 - [redacted]

b7c

November 6, 1958

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-10-85 BY SP2 [illegible]

Mr. Roy M. Cohn
29 Broadway
New York, New York

Dear Roy:

I have received your note enclosing the memorandum prepared by your associate, Mr. Thomas A. Bolan, under date of October 29, 1958.

Your interest as well as that of Mr. Bolan in combatting the malicious attacks being made on the FBI in the current smear campaign against us is very gratifying. I have examined the material compiled by Mr. Bolan with great interest.

Kindly express to Mr. Bolan my appreciation for the time and effort expended by him in preparing his memorandum.

With best regards,

Sincerely,

Edgar

MAILED 11
NOV - 7 1958
COMM-FBI

NOTE ON YELLOW:

Salutation and closing per letter to Cohn 10-29-58, which also related to current smear campaign against FBI.

See memo Baumgardner to Belmont 11-6-58, captioned "Unknown Subject, Harvey Matusow, Et al., Perjury, Subornation of Perjury, Obstruction of Justice," [redacted]

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OFFICE OF DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

December 29, 1959

The attached book "Diary of a D.A." by Martin M. Frank was sent to the Director from Henry Holt and Company, Inc., 383 Madison Avenue, New York 17, New York.

Mr. Tolson
Mr. Belmont
Mr. DeLoach
Mr. McGuire
Mr. Mohr
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. Jones
Mr. W.C. Sullivan
Tele. Room
Miss Holmes
Miss Gandy

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-10-88 BY SP2 T/bk

Attachment

b7C

MARTIN M. FRANK
Associate Justice

SUPREME COURT
APPELLATE DIVISION · FIRST DEPARTMENT
NEW YORK

Book detached and filed in Bureau Library 1/20/60

1 ENCLOSURE

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23 JAN 11 1960

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1 REC-94 62-97564-12

EX 104

October 20, 1959

PERSONAL

Honorable Martin M. Frank
Justice of the Supreme Court
Appellate Division
First Department
27 Madison Avenue
New York 10, New York

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-10-88 BY SP2 [illegible]

My dear Judge:

Just a short note to let you know of my appreciation for your thoughtfulness in making the manuscript of "Diary of a D. A." available to me through Roy Cohn. Your references to the FBI were appreciated.

It is obvious that you did a great deal of research and study in preparation for writing this book.

Sincerely yours,

J. Edgar Hoover

MAILED 20
OCT 20 1959
COMM-FBI

1 - Mr. DeLoach

NOTE: See Jones to DeLoach memorandum dated 10-16-59 captioned "Diary of a D. A." by Martin M. Frank, Justice, Appellate Division New York Supreme Court, New York, New York."

25 OCT 21 1959

[redacted]

Tolson
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Parsons
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W.C. Sullivan
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Gandy

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OCT 1959

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REC- 94 6d-97564-12

October 20, 1959

Mr. Roy M. Cohn
Saxe, Bacon and O'Shea
30 Exchange Place
New York 5, New York

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-10-84 BY SP2 [illegible]

Dear Roy:

Thank you for your thoughtfulness in making the manuscript of Judge Frank's book, "Diary of a D. A.," available to Mr. DeLoach. I am sending the manuscript to you under separate cover so you may return it to Judge Frank.

Sincerely,

J. Edgar Hoover

MAILED 30
OCT 20 1959
COMM-FBI

OCT 21 1959

1 - Mr. DeLoach

NOTE: See Jones to DeLoach Memorandum dated 10-16-59 captioned, "Diary of a D. A." by Martin M. Frank, Justice, Appellate Division New York Supreme Court, New York, New York," [redacted] b7c

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[redacted] b7c

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STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. DeLoach

DATE: October 16, 1959

FROM : M. A. Jones

SUBJECT: "DIARY OF A D. A."
BY MARTIN M. FRANK
JUSTICE, APPELLATE DIVISION
NEW YORK SUPREME COURT
NEW YORK, NEW YORK

Tolson
Belmont
DeLoach
McGuire
Mohr
Parsons
Rosen
Tamm
Trotter
W.C. Sullivan
Tele. Room
Holloman
Gandy

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-10-88 BY SP3 J/bal

You ask that we review "Diary of a D. A." written by Martin M. Frank, a Justice of the Appellate Division of the New York Supreme Court. This manuscript was sent to you under a personal and confidential cover by Roy Cohn. The publishers of the book will be Henry Holt and Company.

Justice Frank writes in a very interesting manner re his experience as a D. A. in Bronx County, New York. The book contains nothing new of interest to us and although the FBI is mentioned in five or six places such references are only in a collateral manner except in one instance where he clearly states the FBI is a very efficient organization. Many cases prosecuted by Frank are described as well as his work with the police and detectives in developing evidence sufficient to go to trial. He emphasizes the importance of a district attorney proving a person innocent as well as guilty and cites three or four illustrations to prove his point. Throughout the book there is a very definite overtone that the D. A.'s office in Bronx is above dishonesty or political connivancy and that Frank himself bent over backwards in every case to prove his honesty.

There is considerable discussion of legal matters such as search, arrest, arraignment and interrogation but again nothing new. JusticeFrank states he recognized the communist menace long before the public became aware of the inherent danger in the movement and he briefly mentions a strike inspired by Party members in New York in 1932 which led to the death of the wife of one of the strike-bound companies employees. This instance is handled with the greater emphasis on the criminal aspect rather than subversive problems encountered. He does mention that the photographs of Stalin and Lenin were prominently and openly displayed in the union hall of the strikers.

The facts in this case cannot be determined from Bufiles. The International Labor Defense provided an attorney for Sam Weinstein, the Party member who was accused of the homicide, and the only reference we found relating

REC-9 62-97564-72

1 - Mr. DeLoach

Enclosures (2) 24-21-59

16 OCT 21 1959

CRIM [redacted] b2c

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to this matter was a brochure published by the International Labor Defense of New York City. This organization attempted to convert the Scottsboro (Alabama) case into communist propaganda and came into conflict with the National Association for the Advancement of Colored People and thereafter repeatedly declined in power.

The book contains considerable discussion of purely legal matters relating to such problems the police encounter including search, arrest, arraignment and interrogation, but again nothing of particular interest to the FBI.

[redacted] Roy Cohn specifically requested that the Director forward a brief note to Judge Frank, if in fact, the Director had no objections to the way in which the attached manuscript was written. While this is undoubtedly a move on the part of Cohn to impress Judge Frank, there appears to be no overriding reason why a brief letter could not be sent acknowledging receipt and review of the script. The letter is marked personal so that Judge Frank will make no attempt to use it for publicity or to impress Henry Holt and Company.

RECOMMENDATIONS:

1. That the attached letter be sent to Justice Martin M. Frank.

2. That the enclosed manuscript be returned to Roy M. Cohn, and the attached letter sent to him.

Sent 10-20-59

REC-60 62-97564-13

C-117

January 5, 1960

Honorable Martin M. Frank
Associate Justice of the Supreme Court
Appellate Division
First Department
27 Madison Avenue
New York 10, New York

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-10-80 BY SP1 [illegible]

My dear Judge:

Please accept my thanks for your thoughtfulness in making a copy of your book, "Diary of a D. A.," available to me through the publisher, Henry Holt and Company, Inc. Your kindness is indeed appreciated.

JAN 5 11 32 AM '60
FBI
REC'D-MAILING ROOM

MAILED 27
JAN 1960
COMM-FBI

Sincerely yours,

J. Edgar Hoover

NOTE: Bufiles reflect that through Roy Cohn, Judge Frank previously made available the manuscript for his book. His manuscript was reviewed and it was determined that the book contains considerable discussion of purely legal matters encountered by police officers including searches, arrests, arraignments and interrogations but nothing of particular interest to the FBI although the Bureau is mentioned in a favorable light in several instances. By letter to Frank 10-20-59, the Director acknowledged receipt of the manuscript and expressed appreciation for the references to the FBI. Address per prior correspondence.

Mr. Tolson
Mr. Boardman
Mr. Parsons
Mr. Belmont
Mr. Mohr
Mr. Nease

13

58 JAN 11 1960

b7C

OPTIONAL FORM NO. 10

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Mohr

DATE: January 8, 1960

FROM : C. D. DeLoach

SUBJECT: ROY COHN

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-10-84 BY SP8 AJF/ak

Tolson
Mohr
Parsons
Belmont
Callahan
DeLoach
Malone
McGuire
Rosen
Tamm
Trotter
W.C. Sullivan
Tele. Room
Gandy

On January 7, 1960, and January 8, I received calls from [redacted] and [redacted] of Roy Cohn's office in New York City. Both men advised Roy Cohn is currently overseas in connection with completing arrangements with Ingemar Johansson, the heavyweight boxing champion for a rematch with Patterson (Roy Cohn has formed a corporation which will subsidize this event).

Both [redacted] and [redacted] stated it was necessary for the members of Cohn's corporation to submit fingerprints to the FBI so that final arrangements could be completed for the corporation. This apparently is a New York State Boxing Commission law. They advised the prints would be submitted by the NY State Boxing Commission. [redacted] and [redacted] requested that the fingerprints be handled as expeditiously as possible in view of the fact that Johansson is to arrive in the U.S. on Sunday, January 10, 1960. I told these gentlemen we usually provide 48-hour service in connection with fingerprints. They indicated the prints had been sent several days ago but had not yet been heard from. A check with the Identification Division did not prove this to be true. The fingerprints in question arrived the morning of January 8, 1960. I called [redacted] and apprized him of this fact. He apologized for his original assumption and stated they would appreciate any help we could give them. I told [redacted] we always provide expeditious service and that, of course, we were aware of their desires in this matter.

ACTION:

For information.

1 - Mr. Trotter
CDD/emb
(4)

62 JAN 20 1960

REC-69 62-92524

23 JAN 18 1960

CRIME REC.

OPTIONAL FORM NO. 10

UNITED STATES GOVERNMENT

Memorandum

TO : MR. A. H. BELMONT

DATE: March 25, 1960

FROM : MR. G. H. SCATTERDAY

SUBJECT: ROY MARCUS COHN
NAME CHECK REQUEST

Tolson
Mohr
Parsons
Belmont
Callahan
DeLoach
Malone
McGuire
Rosen
Tamm
Trotter
W.C. Sullivan
Tele. Room
Ingram
Gandy

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-10-86 BY SP4 [illegible]

A regular name check form was received by the Name Check Section on March 24, 1960, from the Department of the Army concerning the captioned individual, born February 20, 1927, New York, New York. This request was for any information of a possible subversive derogatory nature available concerning Cohn. The request was submitted in view of Cohn's position as Chairman of the Board, Lionel Corporation, New York City, with which the Army apparently has defense contracts.

Bureau files reveal that an applicant-type investigation was conducted in 1948 concerning Cohn when he was first employed by the office of the United States Attorney in New York City. This investigation was entirely favorable. He was subsequently the subject of a full-field investigation conducted in 1950 under the Loyalty of Government Employees program, which investigation was initiated upon receipt of an anonymous letter by the Attorney General concerning Cohn, who was then Assistant United States Attorney for the Southern District of New York, charging him with supporting Vito Marcantonio and being affiliated with communist organizations. The investigation failed to substantiate these allegations and Cohn was highly recommended as to character and loyalty by persons contacted.

In 1954 inquiries were conducted upon request from the Department concerning allegations that Cohn, while with the United States Attorney's office, had furnished unauthorized individuals information from FBI reports. These inquiries failed to develop any information substantiating the allegation. (77-37227; 121-22901; 62-97564)

Cohn has always been friendly toward the Bureau and has indicated great admiration for the Director. He has on various occasions conferred with Bureau officials and has personally visited with the Director. He corresponds on occasion with the Director and in November, 1958, the Director extended to Cohn his thanks for Cohn's remarks castigating the smear campaign then being carried on against the FBI by "The Nation" magazine and others. (62-97564)

62-97564-75

REC-68

1 - Mr. DeLoach
1 - Mr. Belmont
1 - Name Check Section

52 APR 1 1960

[redacted]
b7C

OBSERVATION:

With regard to the afore-mentioned investigations conducted concerning Cohn, only the 1948 applicant-type and the 1950 Loyalty of Government Employees investigations are pertinent to the Army's request. The results of the applicant-type investigation are incorporated in the Loyalty investigation. Reports of the latter have been previouslu disseminated to the Department of Justice, Civil Service Commission, and to the Office of the Secretary of Defense.

RECOMMENDATION:

That reports of the 1950 Loyalty of Government Employees investigation be furnished to the Army in response to its name check request.

[redacted]

b7c

[redacted]

b7c

OPTIONAL FORM NO. 10

UNITED STATES GOVERNMENT

Memorandum

Tolson
Mohr
Parsons
Belmont
Callahan
DeLoach
Malone
McGuire
Rosen
Tamm
Trotter
W.C. Sullivan
Tele. Room
Ingram
Gandy

TO : **Mr. Mohr**

DATE: **May 24, 1960**

FROM : **C. D. DeLoach**

SUBJECT: **ROY COHN**

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-10-81 BY [redacted]

[redacted], **secretary to Roy Cohn, called from New York at 4 p.m., 5/24/60. She stated Cohn had instructed her to get in touch with me relative to advising that he planned to go on an 11 p.m. television show tonight to argue the merits of the Morton Sobell case. His debate opponent will be a Congressman whose name [redacted] did not recall.**

[redacted] stated that Cohn wanted to find out if we thought it was proper for him to appear on this television program and also could we give him a quick run down on the Sobell case so that he would have plenty of material for argument. I told [redacted] this was rather a rush order. She replied that Mr. Cohn had only given her these instructions this morning and that she had not had time to call sooner. I told [redacted] that under the circumstances, she might desire to have Cohn call me personally regarding the matter.

At 5:15 p.m., Cohn had not called back. In the event he does call back, he will be told that whether he appears on this television show or not is entirely up to him. He will also be told that inasmuch as he was formerly Assistant U. S. Attorney in New York, and counsel for the McCarthy Committee, he is fully aware himself of all details of the Sobell case; consequently, there appears to be little need for any assistance from the FBI. In brief, Cohn will not be given anything.

ACTION:

For record purposes.

1 - Mr. Parsons
1 - Mr. Belmont
1 - [redacted]

CDD:geg
(5)

REC-15 62-92564-E76

20 MAY 26 1960

EX-105

[redacted]

b7C

b2

b2

b2

OPTIONAL FORM NO. 10

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Mohr

DATE: 12-17-62

FROM : C. D. DeLoach

SUBJECT: GEORGE SOKOLSKY
FUNERAL

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-10-85 BY SP8 LP/bal

Tolson
Belmont
Mohr
Parsons
Rosen
Tamm
Trotter
DeLoach
Walters
Sullivan
Tavel
Soyars
Trotter
Nease
Gandy

I represented the Director at George Sokolsky's funeral Friday, 12-14-62. The service was beautiful by its simplicity. George had left a note to Roy Cohn to be opened upon his death, giving specific instructions as to the funeral and burial. The funeral lasted 15 minutes. It took approximately 2 hours to go out to the cemetery and back for the burial.

I had the opportunity to speak to [redacted] who plans to call the Director in the very near future merely to congratulate him upon his good recovery. [redacted] of the [redacted] Chain was also there, as was [redacted] and many others. There were approximately 25 honorary pallbearers in all. I signed the register as the Director's representative.

b6

[redacted] Roy Cohn owns the apartment that George lived in. He plans to deed it immediately to the widow.

Roy Cohn approached me after the funeral and told me that the Attorney General had greeted him very cordially outside the church and had mentioned don't worry about this case involving you. Just keep up the practice of law rather than "maneuvering" so much.

ACTION:

For information.

1 - [redacted]

62-92564

NOT RECORDED
128 JAN 2 1962

CDD:eah
(3)

JAN 2

XEROX
JAN 2 1962

Mr. DeLoach: February 26, 1963

Mr. Tolson
Mr. Belmont
Mr. Mohr
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. DeLoach
Mr. Evans
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

RE: TAPE RECORDING OF THE "BARRY GRAY" SHOW
2-14-63, NEW YORK, NEW YORK, CONTAINING REMARKS
OF MRS. MORTON SOBELL, STEPHEN LOVE AND
ROY M. COHN

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-10-88 BY SP2 [illegible]

The tape of the above interview has been reviewed by SA [redacted] Crime Research Section. It lasts approximately fifty-five minutes and is a partial segment of the entire program, which, from comments of the announcer (Barry Gray), appears to be two hours in length.

Gray introduces the participants as Mrs. Morton Sobell, the wife of the convicted spy who is now serving a prison sentence in a Federal penitentiary after his conviction for conspiracy to commit espionage. The other participants are: Stephen Love, a Chicago attorney who was formerly a professor at Northwestern School of Law, is Chairman of the Committee on Grievances of the Chicago Bar Association and the Illinois State Bar Association, and is also Chairman of the Supreme Court Committee on Character and Fitness; Roy M. Cohn, an attorney who is a partner in the New York law firm of Saxe, Bacon and O'Shea, 20 Exchange Place, New York 5, New York, is Chairman of the Board of the Lionel Corporation, Director of the 5th Avenue Coach Lines in New York City, Professor of Law at New York Law School, and was one of the prosecutors for the Government in the Sobell and Rosenberg case.

The program begins with a rather detailed and involved statement by Mrs. Sobell who claimed that her husband was unjustly tried, unjustly sentenced, and is now serving an unjust prison term. She claimed he was tried during the Korean War in an atmosphere of hysteria, and that his cause for release from prison and complete withdrawal of all charges has been taken up by many religious leaders and Congressmen. Cohn and Love then make opening statements with appropriate platitudes to each other. This atmosphere does not last too long and they are soon literally shouting at each other.

Cohn does a very effective job of "cutting up" Love, who is obviously not well-prepared to defend or make statements on the case, in spite of the fact that he claims to have read the 2,700 pages of testimony on three separate occasions. Love states that his purpose in appearing on the program is to try to convince Cohn of the innocence of Morton Sobell and for Cohn to use his influence with the Department of Justice and the Administration to "undo a grave injustice."

62-97564

NOT RECORDED
170 MAR 7 1963

12 MAR 7 1963

[redacted] 1

[redacted] 62

CRIM [redacted] RCH

62

Informal Memo, M. A. Jones to DeLoach

There is no mention of the FBI; however, there are many references to the Supreme Court's refusal, on seven separate occasions, to review the merits of the case. Love frequently becomes quite flustered and is unable to make an adequate rebuttal to Cohn's statements. Specifically, on one point which Cohn frequently asks as to why Sobell never took the witness stand in his own defense, Love states that this was the fault of Sobell's attorney and that Sobell should have testified in his own defense. The interview ends with the possibility of a continuation of this discussion between Cohn and Love at some future time on this program.

Enclosure

[redacted]

b7C

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-10-88 BY SP4 Taf/bal

DO-6

OFFICE OF DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

MR. TOLSON
MR. BELMONT
MR. MOHR
MR. DELOACH
MR. CASPER
MR. CALLAHAN
MR. CONRAD
MR. EVANS
MR. GALE
MR. ROSEN
MR. SULLIVAN
MR. TAVEL
MR. TROTTER
MR. JONES
TELE. ROOM
MISS HOLMES
MRS. METCALF
MISS GANDY

b7c

62-97564

NOT RECORDED
[illegible] 1 1964

ENCLOSURE

ROY M. COHN

HAS BECOME COUNSEL TO THE FIRM OF

SAXE, BACON & BOLAN

THE SUCCESSOR FIRM TO

SAXE, BACON & O'SHEA

NOVEMBER 1ST, 1964

598 MADISON AVENUE
NEW YORK, NEW YORK
PLAZA 2-6100

February 21, 1966

PERSONAL

Mr. Roy M. Cohn
Saxe, Bacon and Bolan
598 Madison Avenue
New York, New York 10022

Dear Roy:

Assistant Director John F. Malone of our New York Office has advised me of your encounter with Rex Stout on John Nebel's radio program last Thursday evening and I could not let the opportunity pass without expressing my deepest appreciation. Your support means a great deal to me and I sincerely hope that the future efforts of the FBI will continue to merit your approval.

Sincerely,

Edgar

1 - New York

1 - Mr. DeLoach
1 - Mr. Wick

[redacted] (7)

Tolson
DeLoach
Mohr
Wick
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

MAIL ROOM ☐ TELETYPE UNIT ☐

62-97564-77

FEB

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-106

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. DeLoach

DATE: January 12, 1967

FROM : A. Rosen

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 - [redacted]
1 - [redacted]
1 - [redacted]

SUBJECT: UNKNOWN SUBJECT;
THREAT MADE TO [redacted]
MISCELLANEOUS -
INFORMATION CONCERNING

ASAC Clark, Chicago Office, called and stated that Roy Cohn, former Assistant U.S. Attorney in New York City, had contacted the Chicago Office and related a threat which had been made on the life of an acquaintance, one [redacted]

According to Cohn, he is temporarily residing at the [redacted] in Chicago and when he returned to his hotel today, he received a note stating "Push and [redacted] will be hurt." This note was left with the Desk Clerk and was not sent through the mails.

[redacted] is alleged to be Cohn's girl friend and is a telephone operator at the [redacted]

Cohn explained that he is in Chicago concerning a proxy fight being held in connection with the control of the Mercantile National Bank. Cohn feels that this threat has been made in connection with the fight to obtain control of this bank.

Our Chicago Office is presenting this matter to the U.S. Attorney, although it does not appear there is any Federal violation involved nor are the negotiations concerning the control of the Mercantile National Bank of interest at this time. Cohn understands that the FBI cannot provide him protection.

ST-114 REC-55 62-92564-78

Cohn told ASAC Clark that he might contact someone at the Bureau concerning this threat.

ACTION:

This is submitted for information.

[redacted]

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-10-88 BY 4122 [illegible]

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-106

UNITED STATES GOVERNMENT

Memorandum

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

TO : **Mr. Bishop**

DATE: **January 18, 1968**

FROM : **M. A. Jones**

SUBJECT: **ARTICLE BY ROY COHN
CHIEF COUNSEL FOR
SENATOR JOSEPH MC CARTHY'S
INVESTIGATING SUB-COMMITTEE,
1953-54**

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-10-88 BY SP8AJ

The February, 1968, issue of "Esquire" contains an article titled: "Believe me, this is the truth about the Army-McCarthy hearings. Honest," by Roy Cohn. It is a rehash of the highlights of the hearings heard and seen on the national TV network. It is, more or less, a self-analysis by Cohn to show his "immense political naivete" in 1953-54 compared to his present day status as a "New York lawyer seasoned by fourteen more years of experience." FBI is mentioned in a factual way on pages 59 and 124. Nothing derogatory. Of possible interest to the Director are the following sentences on pages 123 and 124.

> "Similar misplaced emphasis was put on the famous 'purloined letter.' For an entire year, a document had been locked in Senator McCarthy's office files. It was addressed to Major General A. [redacted] Bolling, chief of Army Intelligence, bearing the typewritten closing: 'Sincerely yours, J. Edgar Hoover, Director.' At the top were the words: 'Personal and confidential, via liaison.' The document disclosed that persons with known Communist records were employed at the Fort Monmouth radar and research laboratory, one of the country's most sensitive and secret installations.....The letter created a sensation at the hearings..."

LX-114 REC-23 62-97564-79

On page 124 Cohn states this letter had been given to McCarthy one year earlier by a G-2 officer who was disgusted that no Army action had been taken on the matter.

22 MAR 6 1968

Cohn states that his first appearance on the witness stand was disaster. "I committed virtually every possible blunder. I was rambling, garrulous, repetitious. I was brash, smug and smart-alecky.

XEROX Copy
ENCLOSURE
2-16-68
SJP

1 - Mr. DeLoach
1 - Mr. Bishop
1 - Miss Gandy

CONTINUED - OVER

[redacted]

b7C

I was pompous and petulant." He tells how McCarthy and his friends urged him to obtain a lawyer for himself but he refused. "Despite my poor performance, I would go it alone." (pp. 125, 126) Cohn tells about a secret meeting he held with attorney Joe Welch in an empty committee room. Welch agreed not to embarrass Cohn by discussing his West Point rejection and draft status, while Cohn agreed not to discuss Welch's young partner, Fred Fisher, and his membership in the National Lawyers Guild. Cohn said McCarthy agreed to the trade, but subsequently in a fit of anger over Welch's type of questioning, McCarthy blurted out the Fisher case. (P. 129) Cohn summarizes his opinions on the hearings in his last two paragraphs on page 131.

> "It fell to Joseph N. Welch of Boston to administer the coup de grace. On the afternoon of June 3, tears streaming from his eyes, Welch rose in the Senate Caucus Room to deliver his unforgettable Fisher Soliloquy. It was clearly McCarthy's epitaph, and nobody in the White House, the Pentagon or at home in front of the television set could have asked for a more dramatic finish. Ironically, it was Senator McCarthy himself, by his rash impulsiveness, who had made it possible.
>
> "I doubt that anybody in public life could have survived a barrage like the one directed against Senator McCarthy. It was engineered in the White House, executed by the Army, abetted by the U.S. Senate and exploited in all its goriness by the public news media. Beginning with the secret meeting on January 21 right through the Senate vote in December, McCarthy's fate never could have been other than doom."

RECOMMENDATION:

For information.

[redacted]

[redacted]

b7C

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-106

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. DeLoach

FROM : A. Rosen

SUBJECT: ROY M. COHN
INFORMATION CONCERNING

DATE: April 30, 1969

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 - [redacted]
1 - [redacted]
1 - Mr. Mohr
1 - Mr. Callahan

b7C

Former Assistant to the Director Louis B. Nichols furnished copy of affidavit from Milton Pollack, a New York convict serving time on a state stolen securities charge, and copies of affidavits from three New York Office Agents. All affidavits relate to the prosecution of Roy Cohn by U. S. Attorney Robert M. Morgenthau for alleged fraudulent financial dealings in connection with the Fifth Avenue Coach Lines, Incorporated, a defunct New York City firm. Cohn was indicted in November, 1968, and January, 1969, by Federal Grand Jury based on Securities and Exchange Commission investigation. No FBI investigation conducted.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE. 5-29-84 BY SP2 [illegible]

Cohn has alleged indictments were motivated by personal animosity against him by U. S. Attorney Morgenthau and in support of this contention introduced affidavit from Pollack stating that U. S. Attorney Morgenthau and his assistants promised Pollack assistance in getting a pardon if he would help develop a prosecutable offense against Cohn. U. S. Attorney Morgenthau's refutation of this charge included affidavits by three New York Office Agents acquainted with Pollack, stating they knew of no collusion between U. S. Attorney's Office and Pollack in regard to Cohn.

62-97564-80

There is no record at Seat of Government as to the affidavits filed by Pollack or the New York Agents. It appears these affidavits were requested by U. S. Attorney's Office, New York, and should have been brought to the Bureau's attention for review and approval before being furnished to U. S. Attorney's Office. SAC Baker, New York, has been instructed to review the affidavits and look into the circumstances of the preparation, supervisory review, and submission of these affidavits and to furnish explanations from Agent and supervisory personnel and submit recommendations for appropriate action which may be warranted.

Enclosure

[redacted] ENCLOSURE

b2

MAY 28 1969

COPY MAILED FOR MR. TOLSON

CONTINUED - OVER

5 MAY 16 1969

[redacted]

b7C

PERS. [redacted]

Memorandum to Mr. DeLoach
RE: ROY M. COHN

ACTION:

(1) Attached is a letter to Mr. Louis B. Nichols in acknowledgment of his furnishing the above referred to affidavits.

(2) Upon receipt of clarifying information from New York as to the circumstances surrounding the preparation and furnishing of Agents' affidavits, recommendations will be made as to whether any administrative action is warranted.

b7C

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 - [redacted]
1 - [redacted]
1 - Mr. Mohr
1 - Mr. Callahan

b7C

April 30, 1969

Mr. Louis B. Nichols
Box 419, Route 1
Leesburg, Virginia 22075

Dear Nick:

The material which you furnished to Mr. DeLoach on April 25, 1969, relative to the Roy Cohn matter in New York has been brought to my attention. I appreciate your interest in making this material available.

Sincerely,

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-10-88 BY SP4 Jock

b7

[redacted]

NOTE: See memorandum Rosen to DeLoach, dated 4/30/69, captioned "Roy M. Cohn; Information Concerning"; [redacted] b7C
Mr. Nichols is on the Special Correspondents List.

[redacted] b7C

62-91764-80 Feb 20

ENCLOSURE

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

MAIL ROOM ☐ TELETYPE UNIT ☐

JOHN EDGAR HOOVER
DIRECTOR

Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.

April 30, 1969

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-10-88 BY SP8 [illegible]

Mr. Louis B. Nichols
Box 419, Route 1
Leesburg, Virginia 22075

Dear Nick:

The material which you furnished to Mr. DeLoach on April 25, 1969, relative to the Roy Cohn matter in New York has been brought to my attention. I appreciate your interest in making this material available.

Sincerely,

ENCLOSURE

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-106

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. DeLoach

FROM : T. E. Bishop

DATE: 1/23/68

Tolson
Belmont
Mohr
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-10-88 BY SP4 [illegible]

SUBJECT: LEO CHERNE
APPEARANCE ON WILLIAM
BUCKLEY TV SHOW

While talking with former Assistant to the Director L. B. Nichols on other matters on 1/23/68, he advised me that he had been informed that William Buckley recently made a tape of a TV show which will be shown later in various parts of the country. The show featured an appearance by Roy Cohn and covered principally the matters in Roy Cohn's recent article in Esquire magazine about the Army-McCarthy hearings. One of the panelists on the show was Leo Cherne, Executive Director of the Research Institute of America. Mr. Nichols said he was informed that during the discussion, Cherne made a statement to the effect that he had opposed former Senator Joseph McCarthy in his campaign for Senator from Wisconsin in 1946 because McCarthy was supported by communists. Cherne said he had consulted Mr. Nichols, whom he described as "the number two man to Mr. Hoover," about this and Nichols had suggested that he oppose McCarthy.

Mr. Nichols advised that he has absolutely no recollection of such an incident and is certain he never so advised Cherne

b7c [redacted]

Our files reflect no information to indicate that Mr. Nichols ever so advised Cherne and, in fact, reflect that the first time Cherne had ever contacted Mr. Nichols was on 3/19/47 (which would have been after McCarthy's election), when he was referred to Mr. Nichols' office by the Director's office when Mr. Hoover could not see him. Their discussion at that time, according to a memorandum submitted by Mr. Nichols dated 4/1/47, had absolutely nothing to do with McCarthy.

JAN 30 1968

RECOMMENDATION:

INDEXED
1968

The Crime Records Division will follow this matter in order to monitor the Buckley TV show dealing with Roy Cohn's appearance.

1 - Mr. DeLoach
1 - Mr. Jones

TEB:mls

CRIME RESEARCH

ORIGINAL FILED IN

0-10 (Rev. 7-17-68)

3 IN F.B.I. SHIFTED OVER COHN CASE

Judge Orders 2 Sides Not to Discuss Transfers

By EDWARD RANZAL

Three Federal Bureau of Investigation agents have been transferred from the New York office after giving the Government affidavits in the Roy M. Cohn bribe conspiracy case.

The transfers were discussed at a pre-trial conference Wednesday before Federal Judge Inzer B. Wyatt. At the end of the conference, Judge Wyatt ordered that the lawyers, court personnel and parties involved not discuss any aspect of the case with the news media.

The trial is scheduled for Sept. 23.

Citing Federal guidelines, "Free Press—Fair Trial" established for the Southern District of New York, Judge Wyatt said: "I think we're told to let the 'free press' alone. That's the way I understand it."

No Comment on Transfers

The F.B.I., the office of United States Attorney Robert M. Morgenthau and defense lawyers would not discuss the transfer of the agents after the court session.

The indictment against Mr. Cohn and three others stems from the affairs of the Fifth Avenue Coach Lines when the city was taking it over in 1962. At one time Mr. Cohn was a director of the bus line, and his law firm, Saxe, Bacon & Boland, was counsel to the company.

Mr. Cohn, who in addition to being a lawyer is a financier, was chief counsel in the nineteen-fifties to a United States Senate subcommittee headed by the late Senator Joseph R. McCarthy.

In pre-trial motions seeking to throw out the present indictment against him, Mr. Cohn offered an affidavit by Milton Pollack, an ex-convict, who said that Mr. Morgenthau had ordered him transferred from a state prison to the Federal House of Detention to help get evidence against Mr. Cohn.

Tolson
Dekbach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

[redacted]

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-10-88 BY SP1 [illegible]

The Washington Post
Times Herald
The Washington Daily News
The Evening Star (Washington)
The Sunday Star (Washington)
Daily News (New York)
Sunday News (New York)
New York Post
The New York Times
The Sun (Baltimore)
The Daily World
The New Leader
The Wall Street Journal
The National Observer
People's World
Examiner (Washington)

Date JUN 20 1969

62-97564

[redacted]

54 AUG 11 1969

Bugging Attempt Alleged

Pollack swore that Government prosecutors had asked him to use electronic devices to get the evidence but that "I did not do what Morgenthau and his associates asked me to."

In rebuttal, the Government submitted affidavits by the three F.B.I. agents who had talked to Pollack. They said that Pollack had suggested to prosecutors that he was familiar with the use of electronic eavesdropping equipment and that he would like to use it against Mr. Cohn.

The three agents are Donald E. Jones, with 24 years service in the bureau, and Russell F. Sullivan, 15 years' service, both assigned at the time to the organized crime unit, and Jack D. Knox, with six years' service, assigned to the stolen-property and securities unit.

The agents were said to have been transferred to other areas because they had violated an F.B.I. regulation calling for clearing with the F.B.I. in Washington the filing of affidavits.

At the pre-trial conference, Myron J. Greene, Mr. Cohn's lawyer, told Judge Wyatt that the defendant's right to a fair trial had been prejudiced by articles in two publications.

He said that a lengthy article about the Cohn case had been printed in the June 23 issue of the New York magazine.

'This article," he said, "had a rather bizarre comment that three F.B.I. agents were removed from this district, and it implied that it was a result of Mr. Cohn's friendship with J. Edgar Hoover. I greatly regret any publication of this nature."

Dismissal Motion Denied

Previously Judge Wyatt had thrown out the Pollack affidavit and had denied Mr. Cohn's motions for dismissal of the indictment.

Prior to Judge Wyatt's edict against talking about the case, Mr. Cohn had labeled the inference in the magazine article as "pure baloney."

The other article appeared in the Diners Club magazine, "Signature," and Mr. Greene said it put Mr. Cohn "in an unfavorable light."

Judge Wyatt said he had not read either article and did not want to. He suggested that it was past history.

At the opening of the pretrial conference, Judge Wyatt informed the defense that he had hired as a law clerk, John D. Gordan, a relative of Mr. Morgenthau. Defense lawyers offered no objection to Judge Wyatt presiding at the September trial.

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Gandy

230A
COHN 8/31 NX
ADV FOR 6 PM EDT
NEW YORK (UPI)-- THREE FBI AGENTS WHO HELPED U.S. ATTY. ROBERT M. MORGENTHAU IN HIS CASE AGAINST ROY M. COHN WERE PERSONALLY TRANSFERRED OUT OF NEW YORK CITY ON 36 HOURS NOTICE BY FBI DIRECTOR J. EDGAR HOOVER, IT WAS REPORTED SUNDAY.
WILLIAM LAMBERT, A PULITZER PRIZE-WINNING REPORTER, SAID IN AN ARTICLE IN LIFE MAGAZINE THIS WAS JUST ONE EXAMPLE OF THE WAY IN WHICH COHN'S "FRIENDS AND INFLUENCE" PROTECTED HIM.
COHN, 42, WHO WAS CHIEF COUNSEL TO THE SENATE COMMITTEE OF JOSEPH R. MCCARTHY AND NOW IS A NEW YORK LAWYER AND FINANCIER, IS SCHEDULED TO GO TO TRIAL IN SEVERAL WEEKS ON CHARGES OF CONSPIRACY, MAIL FRAUD, BRIBERY, EXTORTION AND BLACKMAIL.
BUT, LAMBERT SAID, THE EPISODE OF THE FBI AGENTS IN APRIL "THOROUGHLY SHOOK UP SOME OF MORGENTHAU'S WITNESSES" AGAINST COHN AND THE PROSECUTOR IS "HAVING A HARD TIME CONVINCING PROSPECTIVE WITNESSES THAT THE COHN PROSECUTION WAS GOING AHEAD AS SCHEDULED BY THE COURT."
LAMBERT SAID COHN'S "FRIENDSHIP" WITH HOOVER DATES TO THE DAYS OF THE MCCARTHY HEARINGS. AMONG OTHER INFLUENTIAL FRIENDS AND ASSOCIATES OF COHN'S HE LISTED SENATE REPUBLICAN LEADER EVERETT M. DIRKSEN, COMMERCE SECRETARY MAURICE H. STANS, DEMOCRATIC NATIONAL COMMITTEEMAN EDWIN L. WEISL, COLUMNISTS WILLIAM F. BUCKLEY JR. AND JACK O'BRIAN AND LEWIS ROSENSTIEL, MULTIMILLIONAIRE HEAD OF THE SCHENLEY DISTILLERIES COMPLEX.
THE FBI INCIDENT INVOLVED LOUIS NICHOLS, FORMER ASSISTANT TO HOOVER WHO SINCE THE ELECTION OF PRESIDENT NIXON "HAS BEEN FREQUENTLY MENTIONED AS A SUCCESSOR TO HOOVER," LAMBERT SAID.
AT COHN'S URGING ROSENTHSTIEL GAVE NICHOLS A $100,000-YAR JOB AND STOCK OPTIONS IN 1957 WHEN HE RETIRED FROM THE FBI, LAMBERT SAID. NICHOLS LATER BECAME EXECUTIVE VICE PRESIDENT IN CHARGE OF CORPORATE DEVELOPMENT AND PUBLIC AFFAIRS AND WAS ELECTEDTO THE SCHENLEY BOARD.

"IT WAS NOT UNTIL LAST APRIL THAT NICHOLS HAD AN OPPORTUNITY TO SHOW HIS GRATITUDE FOR COHN'S FAVORS," LAMBERT SAID.

THE FBI AGENTS BECAME INVOLVED IN THE COHN CASE OVER AN AFFIDAVIT THAT COHN'S LAWYERS SUBMITTED IN SEEKING DISMISSAL OF THE INDICTMENTS AGAINST HIM.

THE AFFIDAVIT FROM MILTON "MANNIE" POLLACK, WHO WAS SERVING TIME FOR GRAND LARCENY AND AWAITING TRIAL ON A CHARGE OF POSSESSING STOLEN SECURITIES, CHARGED THAT MORGENTHAU'S OFFICE HAD PROMISED TO HELP HIM GET A PARDON IF HE WOULD HELP "IN INVEIGLING ROY COHN INTO SOME TRANSACTION THAT COULD RESULT IN HIS PROSECUTION", LAMBERT SAID.

MORGENTHAU'S AIDES FILED AFFIDAVITS REFUTING THE CHARGES AND, AT THEIR REQUEST, SO DID FBI AGENTS DONALD JONES, RUSSELL SULLIVAN AND JACK KNOX, LAMBERT SAID. HE SAID JONES AND SULLIVAN "WERE OLDTIMERS WITH THE BUREAU, CONSIDERED TO BE AMONG THE BEST AGENTS IN THE NEW YORK OFFICE'S ORGANIZED CRIME AND ANTIRACKETEERING SECTION" WHILE KNOX WAS A "RELATIVE NEWCOMER."

THE AGENTS MADE THE MISTAKE OF FAILING TO SUBMIT COPIES OF THEIR AFFIDAVITS TO THE WASHINGTON FBI OFFICE, AS REQUIRED BEFORE TURNING THEM OVER TO THE U. S. ATTORNEY, HOWEVER, LAMBERT SAID.

"THE AGENTS' AFFIDAVITS WERE FILED WITH THE COURT LAST APRIL. COHN PROMPTLY TURNED HIS COPIES OVER TO NICHOLS, WHO CHARGED INTO THE WASHINGTON HEADQUARTERS OF THE BUREAU DEMANDING THAT THE AGENTS BE CENSURED," LAMBERT SAID.

"HOOVER PERSONALLY ORDERED THE THREE AGENTS TRANSFERRED OUT OF NEW YORK. ON MAY 2, EACH RECEIVED A LETTER OF CENSURE AND WAS GIVEN 30 DAYS TO REPORT TO HIS NEW POST -- JONES TO GO TO ST. LOUIS, SULLIVAN TO LOUISVILLE AND KNOX TO PITTSBURGH," LAMBERT SAID.

"BUREAU MEN ARE ACCUSTOMED TO BEING ORDERED AROUND IN A FAIRLY PEREMPTORY WAY BUT SUCH DISCIPLINARY TRANSFERS USUALLY HAVE A GLOSS OF LOGIC," HE SAID. "THIS TIME THE MEN WERE BEING MOVED FOR DOING WHAT IN ESSENCE THEY WERE PAID TO DO -- HELPING A U. S. ATTORNEY PROTECT HIS CASE."

LAMBERT SAID THAT MORGENTHAU WAS "FURIOUS" AND CONFRONTED JOHN F. MALONE, THE ASSISTANT FBI DIRECTOR WHO HEADS THE NEW YORK OFFICE. MALONE REPORTED BACK TO HOOVER.

"THE NEXT DAY HOOVER PERSONALLY DIRECTED THE NEW YORK FIELD OFFICE TO INFORM THE THREE WAYWARD AGENTS THAT THEY NOW HAD UNTIL MIDNIGHT THE FOLLOWING DAY -- 36 HOURS IN ALL -- TO REPORT TO THEIR NEW STATIONS, WHICH THEY DID," LAMBERT SAID.

ADV FOR 6 PM EDT.

OT417PED

Tolson
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Holmes
Gandy

069A

COHN 9/1 NX

NEW YORK (UPI)--LIFE MAGAZINE REPORTED SUNDAY OF NEW YORK LAWYER AND FINANCIER ROY COHN USED HIS INFLUENCE TO HAVE THREE FBI AGENTS WHO HELPED U.S. ATTY. ROBERT M. MORGENTHAU PROSECUTE HIM TRANSFERRED OUT OF NEW YORK CITY ON 36 HOURS NOTICE.

THE CIRCUMSTANCES WHICH LED TO THE TRANSFERRAL MADE BY FBI DIRECTOR J. EDGAR HOOVER WERE DESCRIBED IN A LIFE MAGAZINE ARTICLE BY PULITZER PRIZE-WINNING REPORTER WILLIAM LAMBERT.

COHN, 42, WHO SERVED AS CHIEF COUNSEL TO THE SENATE COMMITTEE OF JOSEPH R. MCCARTHY IS SCHEDULED TO GO TO TRIAL IN SEVERAL WEEKS ON CHARGES OF CONSPIRACY, MAILFRAUD, BRIBERY, EXTORTION AND BLACKMAIL.

LAMBERT SAID MORGENTHAU, WHO FACES PROBABLE REPLACEMENT BY THE NIXON ADMINISTRATION, HAD DIFFICULTIES IN PREPARING THE CASE AFTER LOUIS NICHOLS, FORMER ASSISTANT TO HOOVER FOR WHOM COHN SECURED A $100,000-A-YEAR JOB WITH SCHENLEY DISTILLERIES, "HAD AN OPPORTUNITY TO SHOW HIS GRATITUDE FOR COHN'S FAVOR" BY HAVING THE AGENTS TRANSFERRED IN APRIL.

LAMBERT SAID THE THREE AGENTS HELPED MORGENTHAU ON THE COHN CASE ALTHOUGH "NONE OF THE THREE HAD BEEN ASSIGNED TO THE COHN CASE. INDEED THE FBI WAS SINGULARLY UNINTERESTED IN INVESTIGATING A KNOWN FRIEND OF THE DIRECTOR'S."

AFTER THE TRANSFERRAL OF THE THREE AGENTS--DONALD JONES TO ST. LOUIS; RUSSELL SULLIVAN TO LOUISVILLE, AND JACK KNOX TO PITTSBURGH--LAMBERT SAID MORGENTHAU HAD TROUBLE IN ROUNDING OUT HIS CASE AGAINST COHN.

"NEEDLESS TO SAY THE EPISODE NOT ONLY ADDED LUSTER TO THE COHN LEGEND BUT THOROUGHLY SHOOK UP SOME OF MORGANTHAU'S WITNESSES. IF COHN THROUGH NICHOLS COULD BRING ABOUT THE ARBITRARY TRANSFER OF THREE FBI AGENTS, WHAT CHANCE HAD AN ORDINARY CITIZEN?

WASHINGTON CAPITAL NEWS SERVICE

"WORD LEAKED OUT OF THE U.S. ATTORNEY'S OFFICE THAT MORGANTHAU WAS HAVING A HARD TIME CONVINCING PROSPECTIVE WITNESSES THAT THE COHN PROSECUTION WAS GOING AHEAD AS SCHEDULED BY THE COURT."

LAMBER SAID COHN'S "FRIENDSHIP" WITH HOOVER DATES TO THE DAYS OF THE MCCARTHY HEARINGS. AMONG OTHER INFLUENTIAL FRIENDS OF COHN'S LISTED IN THE STORY ARE SENATE REPUBLICAN LEADER EVERETT M. DIRKSEN, COMMERCE SECRETARY MAURICE H. STANS, DEMOCRATIC NATIONAL COMMITTEEMAN EDWIN L. WEISL, COLUMNISTS WILLIAM F. BUCKLEY JR., AND JACK O'BRIAN, AND SCHENLEY MAGNATE LEWIS ROSENSTIEL.

LAMBERT CITED COHN'S ALLEGED INFLUENCE WITH THE NEW YORK PRESS AND SAID THE FINANCIER'S FREQUENT CLAIMS OF A "VENDETTA" BEING LAUNCHED BY MORGENTHAU OFTEN RECEIVED MORE PUBLICITY THAN THE PROSECUTION. HE SAID BUCKLEY ARRANGED A $65,000 LOAN FOR A YACHT THROUGH A COHN-CONTROLED BANK AND O'BRIAN HOLDS A MINORITY INTEREST IN A COHN-CONTROLLED RADIO STATION IN ATLANTIC CITY, N.J.

IN THE FBI INCIDENT, LIFE SAID THE AGENTS BECAME INVOLVED IN THE CASE WHEN COHN'S LAWYERS SUBMITTED AN AFFIDAVIT ON SEEKING DISMISSAL FOR THE INDICTMENT AGAINST HIM. THE AFFIDAVIT, FROM MILTON "MANNIE" POLLACK, WHO WAS IN JAIL ON A GRAND LARCENY CONVICTION AND FACED CHARGES OF POSSESSION OF STOLEN SECURITIES, SAID MORGENTHAU'S OFFICE HAD PROMISED TO HELP POLLACK GET A PARDON IF HE WOULD HELP IN "INVEIGLING ROY COHN INTO SOME TRANSACTION THAT COULD RESULT IN HIS PROSECUTION."

THE AGENTS AND MORGENTHAU'S STAFF REFUTED THE CHARGES, BUT THE AGENTS FAILED TO SEND A COPY OF THEIR AFFIDAVITS TO WASHINGTON AS REQUIRED BY THE FBI. THE STATEMENTS WERE GIVEN DIRECTLY TO MORGENTHAU, ACCORDING TO LAMBERT.

"THE AGENTS' AFFIDAVITS WERE FILED WITH THE COURT LAST APRIL. COHN PROMPTLY TURNED HIS COPIES OVER TO NICHOLS, WHO CHARGED INTO THE WASHINGTON HEADQUARTERS OF THE BUREAU DEMANDING THAT THE AGENTS BE CENSURED.

"HOOVER PERSONALLY ORDERED THE THREE AGENTS TRANSFERRED OUT OF NEW YORK...MORGENTHAU WAS FURIOUS," AND CONFRONTED ASSISTANT FBI DIRECTOR JOHN F. MALONE IN NEW YORK, WHO REPORTED TO HOOVER, LIFE REPORTED.

LAMBERT SAID THE NEXT DAY HOOVER PERSONALLY GAVE THE AGENTS 36 HOURS TO GET TO THEIR NEW ASSIGNMENTS.

YM920AED

LOUIS B. NICHOLS
Box 419, Rt. 1
Leesburg, Virginia 22075

4/25

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-10-88 BY SP8AJ/kal

Dear Deke:

Here are the affidavits soley as a matter of interest. Obviously Morganthaus people wouldnt proposition anyone in the presence of Bureau Agents.

LBN

REC-93

62-93564-81

5

ENCLOSURE
ENCLOSURE ATTACHED

b7C

FBI/DOJ

4-750 (Rev. 4-17-85)

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FEDERAL BUREAU OF INVESTIGATION
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FBI/DOJ

FD-36 (Rev. 12-13-58)

FBI

Date: 5/9/69

Transmit the following in _____
(Type in plain text or code)

Via AIRTEL REGISTERED MAIL
(Priority or Method of Mailing)

TO : DIRECTOR, FBI
ATT: ASST. TO DIR. JOHN P. MOHR

FROM : SAC, NY

SUBJECT: ROY COHN;
MISCELLANEOUS INFORMATION CONCERNING

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-10-88 BY [redacted]

Mr. Rosen
Mr. Conrad
Mr. Callahan
Mr. Bishop
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

Remytel 5/7/69 and Butel call today.

SAs J. D. Knox; R. F. Sullivan, and D. E. Jones were interviewed by ADIC J. F. Malone in the presence of SAC J.K.Ponder today.

[redacted]

Affidavits are being submitted in accordance with the Bureau's request and no further action will be taken in this matter in the absence of Bureau instructions.

Enclosures (6) ENCLOSURE

ENCLOSURE ATTACHED

62-97564-82

2-Bureau (Encls. 6)
1-NY File 67-1777
1-NY Personnel File SA J. D. Knox
1-NY " " SA R. F. Sullivan
1-NY " " SA D. E. Jones

MAY 19 1969

PERS [redacted]

Approved: John F. Malone
Special Agent in Charge

Sent 66 M Per [redacted]

66 JUN 5 1969

4-750 (Rev. 4-17-85)

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FEDERAL BUREAU OF INVESTIGATION

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62-97564 — 82 Enclosure

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FBI/DOJ

FEDERAL BUREAU OF INVESTIGATION

1/17, 1969

- Director
- Mr. Tolson, 5744
- Mr. DeLoach, 5736
- Mr. Mohr, 5525
- Mr. Bishop, 5640
- Mr. Callahan, 5515
- Mr. Casper, 5234
- Mr. Conrad, 7621
- Mr. Felt, 5256
- Mr. Gale, 1742
- Mr. Rosen, 5706
- Mr. Sullivan, 1026 9&D
- Mr. Tavel, 7746
- Mr. Trotter, 4130 IB

- Mr. Beaver, 5744
- Mr. Cleveland, 1246
- Miss Gandy, 5633
- Miss Holmes, 5633
- Mr. Hyde, 5525

- Mr. Jones, 4264
- [illegible]

Mr. Tolson ____
Mr. DeLoach ____
Mr. Mohr ____
Mr. Bishop ____
Mr. Casper ____
Mr. Callahan ____ 232
Mr. Conrad ____
Mr. Felt ____
Mr. Gale ____
Mr. Rosen ____
Mr. Sullivan ____
Mr. Tavel ____
Mr. Trotter ____
Tele. Room ____
Miss Holmes ____
Miss Gandy ____
____ R&D
____

- [illegible], 1742
- Mr. Donahoe
- Mrs. Henley
- Miss Spear
- Miss Robosky

- Courier Service, 1522
- Mail Room 5531
- Reading Room, 5533
- Records Branch
- Teletype, 5646
- Tour Room, 1734

- See Me
- Call Me
- For Your Info.
- For Approp. Action
- Note & Return
- Check files

[illegible]

I concur.

C. D. DeLoach
Room 5736, Ext. 555

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3 (Rev. 5-22-64)

FBI

Date: 5/29/69

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL
(Priority)

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

TO: DIRECTOR, FBI

FROM: SAC, NEW YORK

RE: ROY COHN
~~MISC.~~ ~~INFO~~ CONCERNING
Miscellaneous - Information

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-20-82 BY SP2 [redacted]

b7C

ReNYtel 5/26/69.

Chief ~~AUSA~~ Assistant U.S. Attorney SILVIO J. MOLLO, Southern District of New York ~~SDNY~~, advises that he has been in contact with the attorney for BERNARD REICHER, who has agreed to have REICHER testify for the government in the trial of ROY COHN ~~et al.~~ and others. Mr. MOLLO stated REICHER has accepted the advice of his attorney and has agreed to testify in the COHN trial.

MOLLO stated that since REICHER will testify for the government, it will be necessary that under Rule 3500 the government produce information previously furnished by REICHER which pertains to the matter at hand. Accordingly, in order that proper preparation may be made for the trial, MOLLO stated that the USA's office at this time needs to examine that material which the government would have to produce. ~~NYO~~ New York Office will review the ~~187~~ pertinent file referred to in reNYtel and thereafter turn over to AUSA MOLLO the material required. Unless ~~HACB~~ advised to contrary by Bureau

REC 43

62-97564-83

25 JUN 2 1969

(3) - BUREAU
1 - NEW YORK
[redacted]
(4)

b7C

54 JUN 6 - 1969

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

MAY 27, 1969

PLAINTEXT

TELETYPE URGENT 1 -

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-14-84 BY

TO SAC NEW YORK

FROM DIRECTOR, FBI 62-97564-84

ROY COHN; MISCELLANEOUS - INFORMATION CONCERNING

MENTEL FIVE TWENTYSIX SIXTYNINE.

BUREAU CONCURS WITH YOUR RECOMMENDATION THAT BUREAU PERSONNEL ARE NOT TO BE INJECTED INTO THIS MATTER IN ANY WAY WHATSOEVER. THEREFORE, NEW YORK ADVISE U. S. ATTORNEY'S OFFICE THAT SA DONALD E. JONES WILL NOT APPEAR AS REQUESTED.

(3)

VIA TELETYPE

ENCIPHERED

NOTE:

New York by teletype 5/26/69 advised of request received from U. S. Attorney's Office, Southern District of New York, to have SA Donald E. Jones, recently transferred to St. Louis, to appear in New York to assist the U. S. Attorney's office in the handling

Interstate transportation of [illegible] conspiracy [illegible] conducted [illegible] investigation in this matter. U. S. Attorney's Office developed information to obtain an indictment of Roy Cohn and others out of a securities and

attempt on the part of the U. S. Attorney's Office to have Bureau aware the Roy Cohn Securities and Exchange

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Trotter
Tele. Room
Holmes
Gandy

JUN 6 1969 TELETYPE UNIT

VIA TELETYPE

MAY 26 1969

ENCIPHERED

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

WA...26

FBI NEW YORK

8-19 PM URGENT 5-26-69 WPK

TO DIRECTOR (PLAINTEXT)

FROM NEW YORK 5P

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 4-7-80 BY SP1 [illegible]

1

ROY COHN, MISCELLANEOUS-INFO CONCERNING

RE RECENT CORRESPONDENCE WITH BUREAU UNDER THIS CAPTION, PARTICULARLY AS IT PERTAINS TO ADMINISTRATIVE ACTION WHICH WAS TAKEN AGAINST SA DONALD E. JONES. SA JONES WAS TRANSFERRED TO THE ST. LOUIS OFFICE AND TRANSFER HAS BEEN EFFECTED.

ON MAY TWENTY SIX, INSTANT, AUSAS PAUL L. PERITO AND JOHN S. ALLEE, SDNY, REQUESTED PRESENCE OF SA JONES LATTER PART OF THIS WEEK. IN JUSTIFYING THEIR REQUEST, THEY FURNISHED FOLLOWING INFO:

ON JANUARY SEVENTEEN, LAST, BERNARD REICHER WAS NAMED IN ONE COUNT OF A SIX COUNT INDICTMENT OBTAINED IN SDNY WHICH INDICTMENT IN ADDITION NAMED ROY COHN, JOHN CURTIN AND JOHN KISER, INTERSTATE TRANSPORTATION IN AID OF RACKETEERING ITAR-BRIBERY. CASE IS ON COURT CALENDAR FOR TRIAL SEPT. TWENTY THREE, NEXT. ACCORDING TO PERITO AND ALLEE, [illegible] VIOLATION DEVELOPED OUT OF A PRIOR SEC (SECURITIES EXCHANGE COMMISSION) INVESTIGATION WHICH RESULTED IN THE DECEMBER SIXTY EIGHT INDICTMENT OF ROY COHN AND VICTOR MUSCAT. [illegible] FEDERAL INVESTIGATIVE AGENCY WAS INVOLVED IN ITAR CASE AND USA'S OFFICE DEVELOPED THE NECESSARY INFO TO OBTAIN INDICTMENT THROUGH GRAND JURY ACTION.

ENCLOSURE

END PAGE ONE

REC-7 6-[illegible]-1[illegible]84

Teletype to [illegible] 5/27/69

[redacted] b7c

MR. DELOACH FOR THE DIRECTOR

[redacted] b7c

4-750 (Rev. 4-17-85)

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FEDERAL BUREAU OF INVESTIGATION

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62-97564-84 pages 2,3,4,5

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FBI/DOJ

5010-106

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Bishop

DATE: 6/23/69

FROM : M. A. Jones

SUBJECT: PETER MAAS

Tolson
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-19-88 BY [redacted]

SYNOPSIS:

New York Office has furnished a copy of 6/23 issue of "New York" magazine. This magazine contains an article by Peter Maas which points out that three Agents of the New York Office were transferred because they had given affidavits in the Cohn matter. The Director noted, "What do we know of Peter Maas?"

[redacted]

RECOMMENDATION:

None. For information.

62-9[illegible]-[redacted]

NOT RECORDED
102 JUN 26 1969

10 JUN 26 1969

DETAILS - CONTINUED OVER

2 - Mr. DeLoach
1 - Mr. Bishop

[redacted]

DETAILS

BACKGROUND:

By airtel dated 6/18/69, the New York Office forwarded a copy of the "New York" magazine of 6/23/69. This magazine contains an article by captioned individual which points out that three Agents of the New York Office were transferred because they had given affidavits in the Cohn matter. In regard to this article, the Director noted, "What do we know of Peter Maas?"

[redacted]

b7c

[redacted]

(DETAILS--Continued Over)

4-750 (Rev. 4-17-85)

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FEDERAL BUREAU OF INVESTIGATION
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☐ Information pertained only to a third party. Your name is listed in the title only.

☐ Documents originated with another Government agency(ies). These documents were referred to that agency(ies) for review and direct response to you.

_____ Pages contain information furnished by another Government agency(ies). You will be advised by the FBI as to the releasability of this information following our consultation with the other agency(ies).

_____ Page(s) withheld for the following reason(s):

_____

_____

☐ For your information: _____

_____

☑ The following number is to be used for reference regarding these pages:
62-97564-NR dtd 6/23/69 page 3

XXXXXX
XXXXXX
XXXXXX

XXXXXXXXXXXXXXXXXXX
X DELETED PAGE(S) X
X NO DUPLICATION FEE X
X FOR THIS PAGE X
XXXXXXXXXXXXXXXXXXX

FBI/DOJ

FBI

Date: 6/18/69 [redacted]

Transmit the following in _____ (Type in plain text or code)

Via AIRTEL _____ (Priority or Method of Mailing)

b7C [redacted]

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-18-84 BY SP2 [illegible]

TO : DIRECTOR, FBI

FROM: SAC, NY (67-1777)

ROY COHN;
INFORMATION CONCERNING

b7C [redacted], called NYO this afternoon and referred to an article in New York magazine, dated 6/23/69, by PETER MAAS, regarding the COHN case. He said the magazine article points out that SAs Knox, Jones, and Sullivan were transferred from NY because they had given affidavits to Morgenthau's office in the COHN matter. [redacted] was informed that this office had no comment to make regarding this matter.

The PETER MAAS article referred to begins on page 8 in the New York magazine, which is enclosed. This is for the Bureau's information and no action regarding it is being taken by New York.

2-Bureau (Encl.)
1-NY File 67-1777

What is name of Petitmans?

62-92564

[redacted]

b7C

Sent to Petitman

[redacted]

ORIGINAL FILED IN 77

102 JUN 3 1969

JUN 3 1969

b7C [redacted]

Approved: _____ Sent _____ M Per _____

51 JUL 1 1969 Special Agent in Charge

FD-36 (Rev. 5-22-64)

FBI

Date: 6/23/69

Transmit the following in _____ (Type in plaintext or code)

Via AIRTEL (Priority)

Mr. Tolson	
Mr. DeLoach	
Mr. Mohr	
Mr. Bishop	
Mr. Casper	
Mr. Callahan	
Mr. Conrad	
Mr. Felt	
Mr. Gale	
Mr. Rosen	
Mr. Sullivan	
Mr. Tavel	
Mr. Trotter	
Tele. Room	
Miss Holmes	
Miss Gandy	

TO: DIRECTOR, FBI

FROM: SAC, NEW YORK

RE: WALL STREET JOURNAL
INFO CONCERNING

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-10-88 BY SP2 [illegible]

b7C

[redacted]

ORIGINAL FILED IN

The foregoing is submitted for the information of the Bureau and should additional data be obtained, it will be promptly forwarded.

62-99564

NOT RECORDED
183 JUL 11 1969

(3) - BUREAU
1 - NEW YORK

[redacted]

12 JUN 24 1969

3

66 JUL 30 1969

CRIME [redacted] SECTION

Approved: _____ Sent _____ M Per _____

Special Agent in Charge

PERS. REC[redacted]

6/26/69

PLAINTEXT

URGENT

1 - Mr. Norford

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-14-84 BY [signature]

TO SAC CHICAGO

FROM DIRECTOR FBI

ROY M. COHN; ET AL.; INFORMATION CONCERNING (ACCOUNTING AND FRAUD SECTION)

IN CONNECTION WITH FORTHCOMING TRIAL OF ROY M. COHN, JOHN A. KISER (ATTORNEY IN COHN'S LAW FIRM AND VICE PRESIDENT OF FIFTH AVENUE COACH LINES, INC.) AND JOHN F. CURTIN (TRANSPORTATION ENGINEER FROM PHILADELPHIA AND EXPERT FOR FIFTH AVENUE COACH LINES, INC.) IN SOUTHERN DISTRICT OF NEW YORK BASED ON A SECURITIES AND EXCHANGE COMMISSION INVESTIGATION AND FEDERAL GRAND JURY INQUIRY (NO FBI INVESTIGATION) USA [redacted], NEW YORK, HAS REQUESTED WHETHER THE FBI HAS WITHIN ITS POSSESSION ANY STATEMENTS OR CONFESSIONS OR ANY RECORD BY ANY MEANS OF VOICE UTTERED SINCE ONE ONE SIXTYTWO BY ABOVE - NAMED DEFENDANTS.

ACCORDING TO THE DEPARTMENT SINCE COHN AND THE OTHERS HAVE FILED A MOTION (GRANTED BY THE COURT AND PURSUANT TO RULE SIXTEEN (A)(ONE), FEDERAL RULES OF CRIMINAL PROCEDURE) TO REVIEW ALL STATEMENTS AND CONFESSIONS INCLUDING ANY

REC 28 62-92564-85

JUN 27 1969

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
[illegible]
[illegible]
[illegible]
[illegible] Room
[illegible]
Gandy

VIA TELETYPE
8:25 pm WRC
JUL 2 0 1969
ENCIPHERED

[redacted] (3)

JUL 7 1969

MAIL ROOM ☐ TELETYPE UNIT ☑

UTTERANCES MADE BY THE DEFENDANTS, IT IS NECESSARY FOR ALL LOGICAL GOVERNMENT AGENCIES INCLUDING THE FBI TO FURNISH COPIES OF ANY SUCH STATEMENTS OR CONFESSIONS.

A REVIEW OF BUREAU RECORDS HAS DISCLOSED WHAT APPEARS TO BE AN UTTERANCE SINCE ONE ONE SIXTYTWO BY COHN TO YOUR OFFICE IN CONNECTION WITH MATTER CAPTIONED QUOTE UNSUB; ROY M. COHN BASH VICTIM; EXTORTION UNQUOTE. YOU FURNISHED INFORMATION ON THIS TO THE BUREAU BY TELETYPE DATED ONE TWELVE SIXTYSEVEN.

PURSUANT TO THE ABOVE REQUEST FOR COPIES OF UTTERANCES BY ANY OF THE THREE DEFENDANTS, BY RETURN AIRTEL COVER ENCLOSE A COPY OF THE DOCUMENT IN YOUR OFFICE BY MEANS OF WHICH THE APPARENT UTTERANCE BY COHN TO YOUR OFFICE CONCERNING THE EXTORTION CASE WAS RECORDED.

ADDITIONALLY, SINCE COHN AND OTHERS INVOLVED IN THE OWNERSHIP OF FIFTH AVENUE COACH LINES, INC., HAD COMMERCIAL INTERESTS IN THE CHICAGO AREA (PARTICULARLY IN THE BANKING FIELD), YOU ARE REQUESTED TO IMMEDIATELY AND EXPEDITIOUSLY CONDUCT A REVIEW OF ALL FILES IN YOUR OFFICE INCLUDING ELECTRONIC SURVEILLANCE FILES WHERE THERE IS A RECORD OF ANY CONTACT WITH COHN, KISKER AND CURTIN. SUCH REVIEW CONCERNS A PERIOD OF ANY UTTERANCE ON OR AFTER ONE ONE SIXTYTWO. THE BUREAU IS TO BE IMMEDIATELY ADVISED UPON COMPLETION OF THIS REVIEW AND IN ANY EVENT NO LATER THAN MONDAY, SIX THIRTY SIXTYNINE. IN THE EVENT THAT STATEMENTS, CONFESSIONS OR OTHER

TELETYPE TO SAC CHICAGO
RE: ROY M. COHEN; ET AL.

TYPES OF UTTERANCES BY THESE THREE PERSONS SINCE ONE ONE SIXTYTWO, IN ADDITION TO THE APPARENT UTTERANCE IN THE EXTORTION CASE MENTIONED ABOVE, ARE FOUND TO BE IN YOUR FILES, COPIES OF SUCH UTTERANCES SHOULD BE MADE AVAILABLE TO THE BUREAU OR IN THE EVENT THAT THE BUREAU ALREADY HAS COPIES AS A RESULT OF COMMUNICATIONS SUBMITTED TO THE BUREAU, THE EXACT LOCATION OF SUCH UTTERANCES SHOULD BE FURNISHED. THESE INSTRUCTIONS SHOULD ALSO BE FURNISHED ANY AUXILIARY OFFICES REQUESTED TO RESOLVE POSSESSION OF SUCH UTTERANCES IN THE EVENT YOUR OFFICE UNCOVERS INFORMATION SUMMARY IN NATURE WHICH IS NOT A DIRECT RECORDING OF A POSSIBLE UTTERANCE BY ANY OF THE THREE DEFENDANTS.

6/25/69

GENERAL INVESTIGATIVE DIVISION

Attached relates to forthcoming trial of Roy M. Cohn and others in Securities and Exchange Commission case in New York which was not investigated by FBI. U. S. Attorney (USA) Morgenthau, New York, in letter to New York Office requested information as to whether FBI has within its possession any statements or confessions or any record by any means of words uttered by Roy Cohn and others since 1/1/62. USA's request based on court order and Rule 16 (A)(1), Federal Rules of Criminal Procedure, whereby the Government must inquire of logical Government agencies as to such statements and confessions of defendants. We are checking to see if electronic surveillance indices and Bureau indices reflect whether statements, utterances, etc., of defendants were obtained by FBI after 1/1/62. In the meantime we will instruct New York to advise USA to transmit his request through regular channels to the Department and we will also take this request up with the Department in order to avoid any delay insofar as the Bureau is concerned.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-14-87 BY SP2 RLF/tlt

b7c

VIA TELETYPE
JUN 24 8 50 P
ENCIPHERED

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

WA ----27----

FBI NEW YORK

11:40 PM URGENT 6-24-69 WPK

TO DIRECTOR (CODE)

ATTN. GENERAL INVESTIGATIVE DIVISION

FROM NEW YORK 5P

b7C

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-10-88 BY SP2 AUG/Sat

ROY M. COHN, INFORMATION CONCERNING.

RENY AND BUREAU TELCALLS, JUNE TWENTY FOUR, INSTANT.

LETTER RECEIVED AT NEW YORK OFFICE (NYO) DATED JUNE "NINETEEN", LAST FROM OFFICE OF UNITED STATES ATTORNEY (USA), SOUTHERN DISTRICT OF NEW YORK (SDNY). IT IS ADDRESSED TO ASSISTANT DIRECTOR IN CHARGE (ADIC) JOHN F. MALONE WHICH IS SET FORTH VERBATIM: RE " UNITED STATES VERSUS ROY M. COHN, JOHN A. KISER, JOHN F. CURTIN, BERNARD REICHER. SIXTY NINE CR. FIFTY FIVE".

"DEAR MR. MALONE:

"THE COURT IN THE ABOVE CAPTIONED CASE HAS ORDERED THE GOVERNMENT TO MAKE AVAILABLE TO DEFENDANTS ROY M. COHN, JOHN A. KISER AND JOHN F. CURTIN COPIES OF ALL 'STATEMENTS' AND 'CONFESSION' OF SAID DEFENDANTS." REC-34 62-97564-86

EX-102

JUN 27 1969

" THE COURT HAS DEFINED ' STATEMENTS' AND 'CONFESSIONS' TO INCLUDE:

"ANY WRITING SIGNED BY...(DEFENDANT) AND ANY RECORD

END PAGE ONE

55 JUL 8 1969

JUL 1 1969

UNRECORDED COPY FILED IN 62-97564-

b7C

MADE IN WRITING OR BY ANY ELECTRIC, ELECTRONIC, MECHANICAL, PHOTOGRAPHIC OR OTHER MEANS, OF ANY WORDS UTTERED BY HIM; 'STATEMENTS' AND 'CONFESSIONS' DO NOT INCLUDE ANY ANALYSIS, INTERPRETATION, SUMMARY, IMPRESSION, OR PARAPHRASE MADE BY GOVERNMENT AGENTS OF WORDS UTTERED BY DEFENDANT; 'STATEMENTS' AND 'CONFESSIONS' DO NOT INCLUDE 'REPORTS, MEMORANDA, OR OTHER INTERNAL GOVERNMENT DOCUMENTS'...EXCEPT SUCH PARTS THEREOF AS PURPORT TO REPRODUCE THE EXACT WORDS USED BY DEFENDANT..."

"THE COURT HAS ALSO ORDERED THAT THE 'DUE DILIGENCE' PROVISION OF FEDERAL RULE OF CRIMINAL PROCEDURE SIXTEEN (A) (ONE) REQUIRES THE GOVERNMENT TO INQUIRE FOR STATEMENTS OF DEFENDANTS COHN, KISER AND CURTIN FROM ANY FEDERAL GOVERNMENT AGENCY ENGAGED IN THE INVESTIGATION OR PREPARATION FOR TRIAL OF THIS MATTER.

"WOULD YOU PLEASE NOTIFY US IN WRITING WHETHER THE FEDERAL BUREAU OF INVESTIGATION HAS WITHIN ITS POSSESSION ANY SUCH 'STATEMENTS' OR 'CONFESSIONS' MADE BY ANY OF THE ABOVE DEFENDANTS ON OR AFTER JANUARY ONE, NINETEEN SIXTY TWO, AND IF

END PAGE TWO

SO, WOULD YOU PLEASE FORWARD COPIES THEREOF TO US SO THAT THEY REACH US BY JULY SEVEN, NINETEEN SIXTY NINE.

VERY TRULY YOURS,

ROBERT M.MORGENTHAU

UNITED STATES ATTORNEY

BY

JOHN S. ALLEE

EXECUTIVE ASSISTANT

UNITED STATES ATTORNEY"

IN REGARD TO THE ABOVE QUOTED COMMUNICATION THE ~~NYO~~ NEW YORK OFFICE POINTS OUT THAT THE RESULT OF AN ~~ELSUR~~ *ELECTRONIC SURVEILLANCE CHECK HAS PREVIOUSLY BEEN SUBMITTED CONCERNING COHN. COHN HAS BEEN THE SUBJECT OF CONSIDERABLE CONTROVERSY IN THE NEW YORK CITY AREA AND CONCERNING WHOM PUBLIC ALLEGATIONS HAVE BEEN MADE BY USA ROBERT M. MORGENTHAU REGARDING NON-BUREAU VIOLATIONS.

IT SHOULD BE NOTED THAT IN ~~RE~~ REFERENCED LETTER, ALLEE HAS REQUESTED CERTAIN INFORMATION INCLUDING WHAT CONSTITUTES A REQUEST FOR AN *ELSUR CHECK CONCERNING COHN, JOHN A. KISER, JOHN F. CURTIN,

END PAGE THREE

AND BERNARD REICHER. IT IS FURTHER NOTED THAT THE ABOVE CITED LETTER REQUESTS THE NYO TO NOTIFY THE ~~SDNY~~ SOUTHERN DISTRICT OF NEW YORK IN WRITING WHETHER THE FBI HAS "WITHIN ITS POSSESSION ANY SUCH 'STATEMENTS' OR 'CONFESSIONS' MADE BY ANY OF THE ABOVE DEFENDANTS ON OR AFTER JANUARY ONE NINETEEN SIXTY TWO". IT IS FURTHER POINTED OUT THAT ALTHOUGH THIS MATTER IS NOT "PER SE" RELATED TO INVESTIGATION WITHIN THE PURVIEW OF THE JURISDICTION OF THE FBI, THE ABOVE QUOTED LETTER HAS CITED WHAT PURPORTS TO BE A COURT ORDER THAT INFORMATION AS NOTED ABOVE SHOULD BE FURNISHED FROM ANY FEDERAL GOVERNMENT AGENCY ENGAGED IN THE INVESTIGATION OR PREPARATION FOR TRIAL OF THIS MATTER.

IT IS ITERATED THAT THE NYO DOES NOT FEEL THAT THE REQUEST MADE BY THE ~~USA~~ United States Attorney, SDNY, CONCERNS AN FBI INVESTIGATION AND IT IS FURTHER FELT THAT THE REQUEST MADE BY THE USA, SDNY, SHOULD BE SUBMITTED FIRST TO THE DEPARTMENT OF JUSTICE THROUGH THE USUAL CHANNELS TO THE BUREAU PARTICULARLY AS IT APPLIES TO "ELSUR MATTERS".

END PAGE FOUR

ACCORDINGLY NYO RECOMMENDS THAT IT SHOULD SO NOTIFY SDNY TO REQUEST THE ABOVE INFORMATION NOTED IN QUOTED LETTER THROUGH THE JUSTICE DEPARTMENT AND SUBSEQUENTLY THROUGH BUREAU Unless Advised to Contrary by Bureau AND ~~UACB~~ WILL DO SO ON JUNE TWENTY SIX NEXT.

END

WA...JDR

FBI WASH DC

0-19 (Rev. 7-17-68)

Tolson
DeLoach
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Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

Cohn Denies Role in Transfer Of 3 FBI Agents in Probe

Attorney Roy M. Cohn vehemently denied today that he had anything to do with the transfer of three FBI agents after they gave affidavits for the government in the bribe conspiracy case against him.

The agents had sworn that ex-convict Milton Pollack lied in his affidavit when he charged that U. S. Attorney Morgenthau asked Pollack to use electronic devices to get evidence against Cohn.

Cohn, former counsel to the Senate subcommittee headed by the late Sen. Joseph McCarthy, had presented Pollack's affidavit to Federal Judge Inzer B. Wyatt in an attempt to have the case thrown out.

Cohn has accused Morgenthau of conducting a "vendetta" against him but Wyatt denied all his motions earlier this month, setting Sept. 2 for the trial.

The three agents were transferred soon after their affidavits were filed. An article written by Peter Maas for New York magazine implied that the transfers resulted from Cohn's friendship with J. Edgar Hoover.

The financier and lawyer, whose troubles stemmed from the affairs of the Fifth Av. Coach Lines, termed that angle "pure baloney."

"The first time I heard of the whole thing was when it was printed," he said. "I never spoke to anyone about it."

The FBI and Morgenthau refused any comment after Wyatt ordered all those connected with the case to refrain from discussing it.

FBI Regulations

However, sources within the bureau indicated that the agents were transfered because they had violated FBI regulations requiring that all affidavits be cleared with the FBI in Washington before being filed.

Cohn, 41, and three other men were indicted in January on six counts of bribery, extortion, blackmail and conspiracy in connection with the city's take-over of the Fifth Av. Coach Lines' bus routes.

Cohn was a director of the company and his law firm represented it during that period.

Cohn also is under federal indictment charging conspiracy, mail and wire fraud, security violations and an alleged $75,000 bribery plot of a state court official.

62

[redacted]

62

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-20-88 BY [signature]

62-9715-4A-

NOT RECORDED
37 JUL 17 1969

53 JUL 18 1969

The Washington Post
Times Herald
The Washington Daily News
The Evening Star (Washington)
The Sunday Star (Washington)
Daily News (New York)
Sunday News (New York)
New York Post 42
The New York Times
The Sun (Baltimore)
The Daily World
The New Leader
The Wall Street Journal
The National Observer
People's World
Examiner (Washington)

Date JUN 24 1969

6/26/69

AIRTEL

1 - [redacted] b7c

To: SAC, New York

From: Director, FBI

ROY M. COHN;
ET AL.
INFORMATION CONCERNING
DUKED: 6/30/69

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-14-88 BY SP1 SCJ

Re Bureau and New York telephone calls 6/25/69.

For your information, the request of U. S. Attorney Morgenthau as to whether the FBI has within its possession any statements or confessions or any record by any means of words uttered since 1/1/62 by Roy Cohn, John A. Kiser and John F. Curtin has been discussed with the Department. The Department advised that all information received from any source relating to Cohn was furnished to U. S. Attorney Morgenthau for his analysis as to pertinency in prosecuting Cohn; therefore, since Cohn and the others have filed a motion granted by the court and pursuant to Rule 16 (A)(1), Federal Rules of Criminal Procedure, to review all statements and confessions including any utterances made by the defendants, it is necessary for all logical Government agencies including the FBI to furnish copies of such statements or confessions. It is the intent of the Department, however, that only such utterances deemed relevant to the SEC investigated case will be made available to the defendants.

This will confirm instructions telephonically furnished your office 6/25/69 to immediately and expeditiously conduct a review of all files in your office, including electronic surveillance files where there is a record of any contact with Cohn, Kiser and Curtin. The Bureau is to be immediately advised upon completion of this review and in any event no later than Monday, 6/30/69. The Bureau is also reviewing files at the Seat of Government as to any such

MAILED 24
JUN 26 1969
COMM-FBI

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Tele. Room
Holmes
Gandy

b7 [redacted] (4)

REC-5 62-97564-87
SEE NOTE PAGE TWO.

10 JUN 27 1969

59 JUL 10 1969

b7c

utterances. Should a lead for an auxiliary office be necessary to resolve whether an utterance by one of these three persons was made to a representative of the Bureau, such lead should be immediately and expeditiously handled.

In the event that statements, confessions, or other types of utterances by these three persons since 1/1/62 are found to be in your files, copies of such utterances should be made available to the Bureau or in the event that the Bureau already has copies as a result of communications submitted to the Bureau, the exact location of such utterances should be furnished. These instructions should also be furnished any auxiliary offices requested to resolve possession of such utterances. Upon completion of this review, the Department will be advised as to the results.

NOTE: See memorandum, A. Rosen to Mr. DeLoach, dated 6/26/69, captioned "Roy M. Cohn; Et Al.; Information Concerning;"

[redacted]

bx

FD-36 (Rev. 5-22-64)

FBI

Date: 6/30/69

Transmit the following in AIRTEL (Type in plaintext or code)

Via (Priority)

TO: DIRECTOR, FBI

FROM: SAC, NEW YORK (92-14207)

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-20-98 BY SP2 [illegible]

SUBJECT: ROY M. COHN
ET AL
INFORMATION CONCERNING

ReNY airtel to Bu, 6/27/69.

By airtel dated 8/19/68, the NY Division requested that [redacted] interviewed in order that the veracity of [redacted], FBI, might be ascertained.

By letter dated 10/24/68, the PH Division furnished the results of the interview by FD-302. Copies of this FD-302 were submitted to the Bureau with referenced airtel.

PH advised NYO on 6/30/69, that a review of their indices concerning COHN and his associates failed to disclose any information other than the above request of the NYO and PH's covering that lead.

[redacted]

Approved: [redacted] Sent [redacted] M Per [redacted]

Special Agent in Charge

JUL 11 1969

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27
5010-104

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. DeLoach

FROM : A. Rosen

SUBJECT: ROY M. COHN; ET AL.
INFORMATION CONCERNING

DATE: July 2, 1969

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 - [redacted]
1 - [redacted]
1 - Mr. Bishop
1 - Mr. Gale

Tele. Room
Holmes
Gandy

[redacted] b7C

SYNOPSIS: Attached for approval is a letter to the Department, with enclosures, replying to the Department's request of 6/27/69, for copies of any record, by any means, of words uttered by Roy Cohn, John A. Kiser and John F. Curtin since 1/1/62, which are to be made available to the court by 7/7/69. This request, based on a court order, concerns the forthcoming trial in U. S. District Court, New York, of these three individuals for bribery, extortion, blackmail and conspiracy with regard to the Cohn group's attempting to obtain favorable action in stockholders' suits against the Fifth Avenue Coach Lines, Inc. The indictment was based on a Securities and Exchange Commission (SEC) investigation. Kiser is an attorney in Cohn's law firm and vice-president of Fifth Avenue Coach Lines, Inc. Curtin is a transportation engineer from Philadelphia and a consultant for the Fifth Avenue Coach Lines, Inc.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-10-89 BY SP2 [illegible]

b7C

A review of Bureau files shows that since 1/1/62, Cohn has been in touch with the FBI on six occasions; [redacted] b7C

Cohn furnished information to our Chicago office on 1/12/67, concerning an extortion threat concerning a friend of his, which USA ruled was not a Federal violation; Cohn telephonically contacted Mr. DeLoach on 6/14/63, from New York City concerning the Christine Keeler - John Profumo case; form letters 3/16/62 and 4/23/65, were received from Cohn concerning programs of the "American Jewish League Against Communism, Inc."; Cohn personally spoke to Mr. DeLoach on 12/14/62, at the funeral of George Sokolsky concerning comments made to Cohn by the then Attorney General; on 7/21/64, Cohn telephonically contacted Mr. DeLoach from New York relating his pleasure with the outcome of a perjury and obstruction of justice trial investigated by the FBI which resulted in a not guilty verdict.

REC-39 62-97564-89

[redacted]

b7C

Enclosures 7-3-69

[redacted]

(8)

CONTINUED - OVER

Memorandum to Mr. DeLoach
Re: ROY M. COHN; ET AL.

[redacted]

A check of the special indices concerning electronic surveillances revealed there have been no overhearings of Cohn, Kiser or Curtin by the FBI.

RECOMMENDATION: That the attached letter and enclosures be forwarded to the Department noting that the documents regarding Cohn's contacts do not appear to be relevant to the SEC case.

OK
✓

[redacted]

b7C

Memorandum to Mr. DeLoach
Re: ROY M. COHN; ET AL.

DETAILS: The Department by letter 6/27/69, requested copies of any statements, confessions or record, by any means, of words uttered by Roy Cohn, John A. Kiser and John F. Curtin to comply with instructions issued by U. S. District Judge, Southern District of New York, to U. S. Attorney Morgenthau to obtain copies of such documents from logical agencies so they could be made available to the defendants pursuant to Rule 16 (a) (1), Federal Rules of Criminal Procedures, which states that upon motion the defendants are entitled to such documents. This motion was filed in connection with an indictment charging Cohn, Kiser and Curtin for bribery, extortion, blackmail and conspiracy in connection with attempts to obtain favorable action in stockholders' suits against the Fifth Avenue Coach Lines, Inc. The investigation leading to the indictment was conducted by the SEC.

b7c

A review of appropriate records has revealed six contacts by Cohn, [redacted]. They are:

Cohn contacted our Chicago office 1/12/67, to report an anonymous telephone call which he interpreted as an extortion threat against a social companion of his. U. S. Attorney declined prosecution as no Federal violation indicated. (9-0-12086). Information recorded on Interview Report Form FD-302.

b7c

Cohn at New York telephonically contacted Mr. DeLoach 6/14/63, [redacted], to discuss a person Cohn was representing, [redacted], who was involved in the Christine Keeler - John Profumo case. Information recorded by memorandum of Mr. DeLoach to Mr. Mohr, 6/17/63, (65-68218-13).

Cohn, by form letters dated 3/16/62 and 4/23/65, under letterhead of "American Jewish League Against Communism, Inc." advised the Bureau as to activities and recent programs of this League. (100-386448-17 and 100-386448-18).

Cohn personally contacted Mr. DeLoach 12/14/62, to advise that the Attorney General had greeted Cohn very cordially outside the church (following the funeral of George Sokolsky) and had mentioned "Don't worry about this case involving you. Just keep up the practice of law rather than 'maneuvering' so much." This information is recorded in memorandum of Mr. DeLoach to Mr. Mohr, 12/17/62 (62-97564) and apparently relates to FBI perjury, obstruction of justice case pending against Cohn at that time as noted below.

89

Memorandum to Mr. DeLoach
Re: ROY M. COHN; ET AL.

Cohn from New York telephonically contacted Mr. DeLoach 7/21/64, to report that he, Cohn, was elated as to the outcome of his trial. (Trial of Cohn, Murray Gottesman, and Morton Robson, former Assistant U. S. Attorney, New York, for perjury, conspiracy, and obstruction of justice concerning alleged $50,000 bribe in August, 1959, to Cohn and then Assistant U. S. Attorney Robson to control indictment in a SEC case. The bribe allegation was not corroborated but Cohn and Gottesman were indicted in connection with their testimony before the grand jury. A verdict of not guilty on all counts was returned by the trial jury). Cohn furnished laudatory comments as to testimony by Bureau Agents. Information recorded in memorandum of Mr. DeLoach to Mr. Mohr 7/24/64 (58-5100-406).

[redacted]

In response to inquiries from the Department, the Department was advised 12/26/68, that the Bureau had no record of overhearings of Cohn. The Department was advised 4/9/69, that we had no record of any overhearings of Kiser and Curtin. These were based on checks of our special indices on electronic surveillances. The special indices were again checked 6/25/69, and this check revealed there were no overhearings of these three individuals subsequent to the prior checks.

Assistant Attorney General
Criminal Division

July 3, 1969

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 - [redacted]
1 - [redacted]
1 - Mr. Bishop
1 - Mr. Gale

Director, FBI

REC-39 62-97564-90

ROY M. COHN
JOHN A. KISER
JOHN F. CURTIN
INFORMATION CONCERNING

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-10-88 BY [signature]

Reference is made to your letter dated June 27, 1969, WW:MK:fca, 113-51-190, and to the request of U. S. Attorney Morgenthau, New York, for copies of any statements, confessions, or of any record by any means of words uttered by Roy M. Cohn, John A. Kiser or John F. Curtin since January 1, 1962, pursuant to a court order for such data based on a motion filed by Cohn and the other defendants in a Securities and Exchange Commission case concerning which Cohn and the others have been indicted.

A review of appropriate records of this Bureau has been made [redacted]. There are enclosed copies of documents relating [redacted] to six contacts made by Cohn.

[redacted]

JUL 3 - 1969

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Gandy

MAIL ROOM ☐ TELETYPE UNIT ☐

See note page 2

Assistant Attorney General
Criminal Division

The documents concerning Cohn relate to a contact by him with our Chicago Office January 13, 1967, regarding an alleged extortion threat to two form letters dated March 16, 1966, and April 25, 1966, advising as to the activities of the American Jewish League Against Communism, Inc."; and to three contacts by Cohn with Mr. Curtis D. Deloach of this Bureau.

No investigation was conducted of the above-mentioned extortion threat as Assistant U. S. Attorney, Chicago, Illinois, advised this threat did not constitute a violation.

Reference is made to my letter dated December 26, 1968, to Assistant Attorney General Fred M. Vinson, Jr., captioned "Roy Cohn; Electronic Surveillance," and my letter dated April 9, 1969, to Assistant Attorney General, Criminal Division, captioned "John F. Curtin, John A. Kiser, Bernard Reicher; Electronic Surveillance," which advised that Cohn, Kiser and Curtin were never subjects of microphone surveillances nor were their conversations monitored by an electronic device by the FBI. For your information, appropriate records of this Bureau were again checked and no conversations of these three individuals were overheard subsequent to these communications.

The above-listed documents as to contacts by Cohn do not appear to be relevant to the Securities and Exchange Commission case. These documents are attached for your review.

Enclosures (7)

NOTE:

See memorandum A. Rosen to Mr. DeLoach dated July 2, 1969, captioned "Roy M. Cohn; et al; Information Concerning"; N. M.:DC

Form 90
(Ed)

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO : Director
Federal Bureau of Investigation

DATE: June 27, 1969

FROM : Mr. Will Wilson
Assistant Attorney General
Criminal Division

WW:HE:fea
113-51-199

SUBJECT: Roy M. Cohn

Reference is made to the letter from United States Attorney Morgenthau, Southern District of New York, to the New York Office of the Bureau dated June 19, 1969, with respect to "United States v. Roy M. Cohn, John A. Kiser, John F. Curtin, Bernard Reicher. 69-CR.-55".

It is requested that the appropriate records of the Bureau be reviewed to ascertain the existence of statements or confessions of the said defendants, and that any such statements or confessions be transmitted to me.

While the investigations which led to the instant indictment were not conducted by the Bureau, the Court's order is sufficiently broad that it may encompass statements or confessions, etc. in what may appear to be unrelated activities of the defendants. Because of the broad ranging activities of these defendants, the Criminal Division kept the United States Attorney, Southern District of New York, informed of all activities of these defendants which came to its attention in the course of the investigation. Disclosure in response to this court order should, therefore, be similarly broad.

EXP. PROC.
JUN 27 1969

35

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 6-22-90 BY SP2 AJT/tkd
Unclassified per DeLoach dtd 6-23-90 SP2 AJT/tkd

letter to AAG Criminal Division 7-3-69
memo A. Rosen to M. DeLoach 7-2-69
b7C per FBI

EX-102

REC-39 62-97564-90

Jul 10
1969

b7C per FBI

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-106

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. DeLoach

FROM : A. Rosen

SUBJECT: ROY M. COHN; ET AL.
INFORMATION CONCERNING

DATE: June 26, 1969

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 [redacted]
1 [redacted]
1 - Mr. Bishop

67 [redacted] c

This is to advise of the results of a discussion with the Department of the request of U. S. Attorney (USA) Morgenthau, New York, concerning whether the FBI has within its possession any statements or confessions or any record by any means of words uttered since 1/1/62, by Roy Cohn, John A. Kiser (attorney in Cohn's law firm and Vice President of Fifth Avenue Coach Lines, Incorporated) and John F. Curtin (transportation engineer from Philadelphia and expert for Fifth Avenue Coach Lines, Inc.). This request relates to the forthcoming trial in U. S. District Court, New York, of Cohn, Kiser, and Curtin for bribery, extortion, blackmail, and conspiracy in connection with the Cohn group attempting to obtain favorable action in stockholders' suits against the Fifth Avenue Coach Lines, Inc., which company the Cohn group controlled. The indictment in this case was based on a Securities and Exchange Commission investigation and Federal grand jury inquiry. We conducted no investigation.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-10-96 BY SP2 [illegible]

According to the Department, all information received by the Department from any source relating to Cohn was furnished USA Morgenthau for his analysis as to pertinency in prosecuting Cohn. However, since Cohn and the others have filed a motion (granted by the court and pursuant to Rule 16 (A)(1), Federal Rules of Criminal Procedure) to review all statements and confessions including any utterances made by the defendants, it is necessary for all logical Government agencies including the FBI to furnish copies of any such statements or confessions. It is the intent of the Department that only such utterances deemed relevant to the SEC investigated case will be made available to the defendants. Any utterances must be in the possession of USA Morgenthau by 7/7/69.

ENCLOSURE ATTACHED

REC-39 91

ACTION: The Department is forwarding a letter to the Bureau confirming the above-mentioned request of USA Morgenthau. In the meantime, we and our New York office are expediting a review of all Bureau files wherein there is a record of any contact with Cohn, Kiser and Curtin. Upon completion, the Department will be advised as to the results.

[redacted]

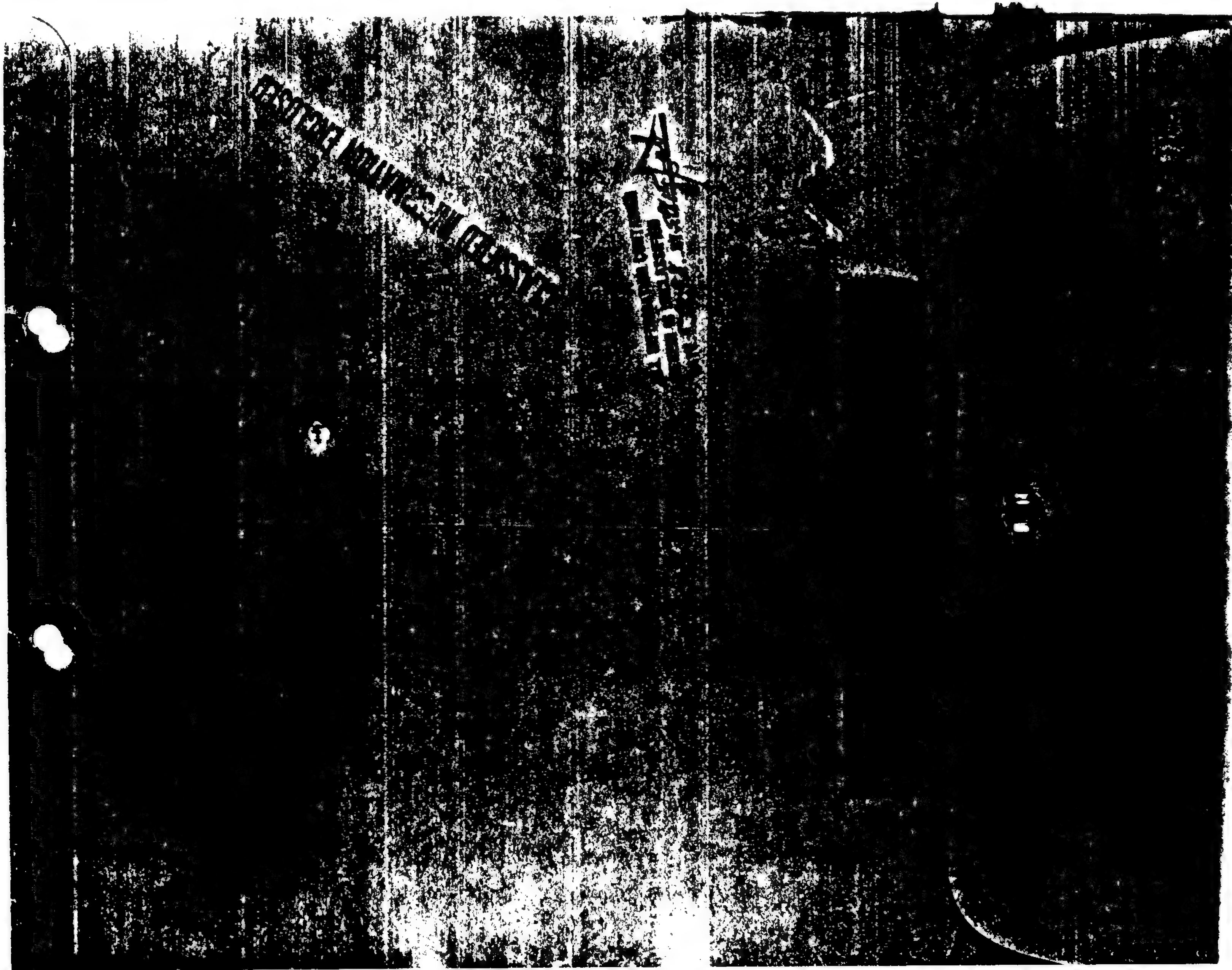
[redacted]

CONTINUED - OVER

30 JUL 23 1969

No dissemination will be made by the New York office or by the Seat of Government of any material found by the New York office or by the search of records at the Seat of Government until such time as that material is carefully reviewed and has been brought to your attention by an appropriate memorandum.

[redacted]


EASTERN AIRLINES, INC.

0-68 (2-24-67)

TO: Special Investigative Division

FROM: ☐ Domestic Intelligence ☒ General Investigative ☐ Special Investigative

REQUEST FOR SEARCH OF SPECIAL INDICES

Date of request	Requesting Agent
6/25/69	SA [redacted] b7C

Please complete following and return one copy to:

Accounting and Fraud Section, Division - ☐ Domestic Intelligence ☒ General Investigative ☐ Special Investigative
Section

NAMES TO BE SEARCHED	KNOWN ALIASES	Results of Criminal and Security Special Indices Search (attach separate sheet, if necessary)
Roy M. Cohn		Roy Cohn references 6/11/62 [redacted]
		[redacted] 7/16/64 mentioned Misur [redacted]
		[redacted] mentioned 3/3/64
		[redacted] 6/1/66
		Roy M. Cohn references [redacted] 6/29/62 NY lawyer
		[redacted] 6/29/62 NY lawyer
		Roy M. Cohn Request 12/16/68 Ans to AG 12/26/68 negative

b2 b7C

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-11-81 BY [redacted]

Searched by [redacted]

Bufile 62-97564

Date 6/25/69

[redacted]

4-750 (Rev. 4-17-85)

XXXXXX
XXXXXX
XXXXXX

FEDERAL BUREAU OF INVESTIGATION

FOIPA DELETED PAGE INFORMATION SHEET

2 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

☑ Deleted under exemption(s) b7C with no segregable material available for release to you.

☐ Information pertained only to a third party with no reference to you or the subject of your request.

☐ Information pertained only to a third party. Your name is listed in the title only.

☐ Documents originated with another Government agency(ies). These documents were referred to that agency(ies) for review and direct response to you.

_____ Pages contain information furnished by another Government agency(ies). You will be advised by the FBI as to the releasability of this information following our consultation with the other agency(ies).

_____ Page(s) withheld for the following reason(s):

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☐ For your information: _____

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☑ The following number is to be used for reference regarding these pages:
62-97564-91 Enclosure pg. 2, 3

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X NO DUPLICATION FEE X
X FOR THIS PAGE X
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XXXXXX

FBI/DOJ

4-312 (Rev. 1-18-62)

Date of Mail _____

Has been removed and placed in the Special File Room of Records Branch.

See File 66-2554-7530 for authority.

Subject JUNE MAIL -

Removed By 98 JUL 17 1969

File Number 62-97564-92

Permanent Serial Charge Out

NIA 6130

6:42 PM URGENT 6-30-69 JRD

TO DIRECTOR

FROM LAS VEGAS

VIA TELETYPE
JUN 30 1969
ENCIPHERED

PARAPHRASE IF DISSEMINATED

Mr. Tolson	
Mr. DeLoach	
Mr. Mohr	
Mr. Bishop	
Mr. Casper	
Mr. Callahan	
Mr. Conrad	
Mr. Felt	
Mr. Gale	
Mr. Rosen	
Mr. Sullivan	
Mr. Tavel	
Mr. Trotter	
Tele. Room	
Miss Holmes	
Miss Gandy	

ATTENTION FRAUD AND ACCOUNTING SECTION - JUNE.

ROY COHN; INFORMATION CONCERNING.

RE LAS VEGAS AIRTEL TO BUREAU DATED DEC. TWENTY, LAST, CAPTIONED ELSUR; ROY M. COHN, BUDED DEC. TWENTY THREE, LAST; BUREAU TELEPHONE CALL TO LAS VEGAS JUNE THIRTY, LAST; AND LAS VEGAS AIRTEL TO BUREAU DATED AUG. TWO, NIETEEN SIXTY TWO, CAPTIONED [redacted] AKA; AR.

FOR THE INFORMATION OF THE BUREAU, COHN WAS NEVER OVERHEARD ON [redacted] AS SET FORTH IN REFERENCED AIRTEL DATED DEC. TWENTY, LAST.

CONVERSATION AS SET FORTH IN LAS VEGAS AIRTEL TO BUREAU DATED AUG. TWO, NINETEEN SIXTY TWO, CAPTIONED [redacted] WAS BETWEEN [redacted] AND AN UNKNOWN MALE WHO WAS NOT [redacted] OR [redacted]. CONVERSATION WAS CONCERNING A ROY - POSSIBLY COHN.

REC-39 62-97564-92

ABOVE INFORMATION DOES NOT APPEAR ON LOG FOR AUG. TWO, NINETEEN SIXTY TWO, BUT WAS TRANSCRIBED DIRECTLY INTO AIRTEL FROM THE TAPE.

JUL 9 1969

6 RECEIVED 8:51 PM JUL 16 1969 WLM

VIA TELETYPE

JUN 27 1969

ENCIPHERED

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

WA 01 1112AM EOM

URGENT 6-27-69 EOM

TO DIRECTOR PLAINTEXT

FROM CHICAGO 1P

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-14-98 BY [redacted]

b7C

ROY M. COHN; ET AL; INFORMATION CONCERNING (ACCOUNTING AND FRAUD SECTION).

REBUTEL DATED JUNE TWENTY SIX LAST.

CHICAGO ELECTRONIC SURVEILLANCE INDICES REFLECT NO RECORD ON ROY M. COHN, JOHN F. CURTIN, OR JOHN A. KISER.

[redacted] AND ONLY ONE [redacted] ONLY REFERENCE IN CHICAGO FILES OF UTTERANCE BY COHN WAS IN CONNECTION WITH EXTORTION MATTER REFERENCED IN BUTEL. THIS STATEMENT BEING FORWARDED TO BUREAU BY AIRTEL.

END

HOLD FOR ONE MORE

EX-102
REC-39 62-92564-93

JUL 9 1969

[redacted]
b7C

59 JUL 17 1969

Rev. 5-22-64)

FBI

Date: 6/27/69

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL _____
(Priority)

TO: DIRECTOR, FBI

FROM: SAC, NEW YORK (62-14207)

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-10-88 BY [redacted]

SUBJECT: ROY M. COHN;
ET AL
INFORMATION CONCERNING

Re Bureau airtel to New York, 6/26/69 and Bureau and New York telcalls, 6/27/69.

[redacted]

b7C

Chief AUSA SILVIO J. MOLLO, SDNY, was contacted by SA [redacted] on 6/27/69 in respect to the letter submitted by USA MORGENTHAU's Office, dated 6/19/69.

Mr. MOLLO was contacted in the absence of AUSA JOHN S. ALLEE and USA MORGENTHAU both of whom are on leave.

MOLLO stated that the request in this letter did not originate in his office; it originated on a motion by the defense which was objected to by the USA's Office. However, the court ruled that the request by the defense should be granted. The court then directed the USA's Office to communicate directly with the various federal agencies and obtain the desired

2 - Bureau
1 - New York

REC-39 62-97564-94

[redacted]

ENCLOSURE
1 cc to Dept by letter 7/3/69

[redacted]

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

59 JUL 18 1969

information. On the basis of the foregoing, JOHN S. ALLEE, Executive Assistant, USA's Office, SDNY, sent similar letters to various federal agencies on 6/19/69.

Mr. MOLLO therefore feels that he should not direct any requests in this matter to the Department.

A review of all files in the NYO, including electronic surveillance files, fails to reflect any interview or signed statement or letter received from ROY COHN [redacted] b7c

b7c

- 2 -

4 750 (Rev. 4-17-85)

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FEDERAL BUREAU OF INVESTIGATION

FOIPA DELETED PAGE INFORMATION SHEET

1 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

☑ Deleted under exemption(s) b7(C)(D) with no segregable material available for release to you.

☐ Information pertained only to a third party with no reference to you or the subject of your request.

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_____ Page(s) withheld for the following reason(s):

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☐ For your information: _____

_____

☑ The following number is to be used for reference regarding these pages:
62-99564-94 Pg. 3

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X NO DUPLICATION FEE X
X FOR THIS PAGE X
XXXXXXXXXXXXXXXXXXX

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XXXXXX

FBI/DOJ

FD-36 (Rev. 5-22-64)

FBI

Date: 6/27/69

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL _____
(Priority)

TO : DIRECTOR, FBI

FROM: SAC, CHICAGO

ROY M. COHN; ET AL;
INFORMATION CONCERNING
(ACCOUNTING AND FRAUD SECTION)

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-10-78 BY SP2 [illegible]

b7C

Re Chicago teletype dated 6/27/69.

Enclosed for the Bureau is the original FD-302 containing the statement made by ROY M. COHN on 1/12/67 in connection with case captioned "UNSUB; ROY M. COHN - VICTIM; EXTORTION", Chicago file 9-4057.

1-

2 - Bureau (Enc. 1) (RM)
1 - Chicago
[redacted] (3)

b7E

ENCLOSURE ATTACHED

REC-39 62-97564-95

12 JUN 30 1969

[redacted] b7C

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

79 JUL 17 1969

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-22-98 BY SP2 [illegible]

ENCLOSURE

62-97564-95

FEDERAL BUREAU OF INVESTIGATION

Date 1/12/67

ROY M. COHN, Carriage House, 215 East Chicago Avenue, advised as follows:

He is an attorney and is Chairman of the Guaranty Bank and Trust Company, Chicago. He is spokesman for a group seeking control of the Mercantile National Bank, Chicago, through proxy. [redacted]

b7C

On January 11, 1967, COHN returned to Chicago, Illinois from a business trip to Washington, D.C. Upon his arrival at the Carriage House, he was given a telephone message slip to the effect that at 4:50 a.m., January 11, 1967, the hotel switchboard operator received an anonymous call for him in which the caller stated "Push and your [redacted] will be hurt." COHN has a social companion named [redacted] and their names sometimes appear together in local newspapers. He felt the message meant that [redacted] or [redacted] would be hurt if he continued to push the proxy fight. He was of the opinion the call to him was made by [redacted] He was unable to furnish additional information.

He furnished the following description of [redacted]

Name	[redacted]
Race	White
Sex	Male
Age	[redacted]
Height	5'6"
Weight	135
Build	Stocky
Hair	[redacted]
Complexion	[redacted]
Residence	[redacted]

b7C

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-12-88 BY SP2 AGT

On 1/12/67 at Chicago, Illinois File # CG 9-4057

by SA [redacted] Date dictated 1/12/67

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

4-750 (Rev. 4-17-85)

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FEDERAL BUREAU OF INVESTIGATION
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☐ For your information: _____

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☑ The following number is to be used for reference regarding these pages:
62-97564- Not Recorded dtd 7/3/69

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X FOR THIS PAGE X
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FBI/DOJ

VIA TELETYPE

DECIPHERED

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

WA 8

332 PM URGENT 8-1-69 JLW

TO DIRECTOR CODE

FROM NEW YORK 67-1777-5424 2P

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-10-88 BY SP8 [redacted]

[redacted] b7c

ROY COHN, MISCELLANEOUS - INFO CONCERNING.

RE BUREAU TELCALL JULY THIRTY FIRST, SIXTYNINE, WHEREIN ADIC INSTRUCTED TO CONTACT USA ROBERT MORGENTHAU RE STATEMENT HE ALLEGEDLY MADE TO EFFECT THAT THREE AGENTS WERE TRANSFERRED FROM THE NYC BECAUSE THEY COOPERATED WITH MORGENTHAU.

USA MORGENTHAU CONTACTED AUGUST FIRST INSTANT BY ADIC. HE WAS ADVISED THAT IT HAS COME TO OUR ATTENTION THAT HE FEELS THAT SAS KNOX, SULLIVAN AND JONES WERE TRANSFERRED FROM THE NYO BECAUSE THEY COOPERATED WITH HIM OR HIS OFFICE. I REFERRED TO A CONFERENCE I HAD WITH MORGENTHAU ON MAY NINE AT WHICH TIME HE ADVISED THAT THE TRANSFER OF THREE AGENTS INVOLVED COULD AFFECT OUTCOME OF COHN CASE. AT THAT TIME, MORGENTHAU WAS SPECIFICALLY ADVISED THAT THE THREE AGENTS WERE TRANSFERRED BECAUSE THEY WERE IN

END PAGE ONE

EX-102

REC 11 62-97564-96

AUG 2 1969

XEROX

59AUG27 1969

MR. DELOACH FOR THE DIRECTOR

[redacted] b7c

PERS. REC. UNIT

NOT RECORDED COPY FILED IN

SERIOUS VIOLATION OF A STRICT BUREAU RULE WHICH PROHIBITS FURNISHING AFFIDAVITS IN ANY FORM WHATEVER WITHOUT PRIOR AUTHORIZATION. MORGENTHAU WAS ADVISED THAT HAD HIS REQUEST BEEN PRESENTED FOR SUCH AUTHORITIZATION UNDOUBTEDLY IT WOULD HAVE BEEN GRANTED.

MORGENTHAU SAID HE UNDERSTOOD THIS FULLY AND WAS NOT UNDER THE IMPRESSION THAT TRANSFER WAS BECAUSE THEY COOPERATED WITH HIM OR HIS OFFICE.

I CONCLUDED BY TELLING HIM THAT MR. HOOVER WANTED TO BE SURE THAT THERE WAS NO MISUNDERSTANDING IN THIS RESPECT AND THE RECORD WAS STRAIGHT.

END

BKR FBI WASHDC

Mr. [illegible]

EX-105

REC- 89 62-91564-97

[redacted]

September 9, 1969

[redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-10-88 BY SP1 [illegible]

Dear [redacted]

Your letter was received on September 8th. The article in "Life" magazine to which you refer is made up of lies and half-truths, and is typical of the hostile attitude which this magazine has displayed toward the FBI for years.

I want to make it crystal clear that the transfers of three Special Agents from our New York Office resulted from their failure to comply with long-standing rules and regulations of this Bureau and had nothing whatsoever to do with the merits of the Roy M. Cohn case. This matter, being handled by United States Attorney Robert M. Morgenthau, resulted from an investigation conducted by the Securities and Exchange Commission, not the FBI.

MAILED 7
SEP - 9 1969
COMM-FBI

Sincerely yours,
J. Edgar Hoover

New York - Enclosure

NOTE: Bufiles contain no record identifiable with [redacted] Special Agents Jack D. Knox, Donald E. Jones and Russell S. Sullivan were [redacted] and transferred from the New York Office on 5-2-69 for failure to notify New York Office and the Bureau concerning their execution of affidavits at the request of the U. S. Attorney's office. [redacted]

Roy M. Cohn was indicted in November, 1968, and January, 1969, by Federal Grand Jury based on Securities and Exchange Commission [illegible].

Director, Sec. [redacted]

(4)

[redacted] TELETYPE UNIT

PERS. [redacted] UNIT

b6
b7C

Sept. 3, 1969

The Honorable J. Edgar Hoover,
Director of Federal Bureau of Investigation,
Washington, D. C.

Sir:

I have always been a great admirer of you personally and also for the honesty and integrity you have displayed in administering the affairs of the FBI. However, an article which appeared in our local paper which, in turn, was quoting from an article in Life magazine has caused me to conjecture if my admiration has been misplaced.

The article states that one, Louis Nichols charged into your Washington headquarters demanding that three of your agents be censured because they had submitted affidavits to Atty. Morgenthau controdicting allegations made by Milton Pollack in regard to the Roy Cohn case.

The article goes on to state that subsequent to Nichols barging into your office you personally and arbitrarily transferred these agents to other territories. Admitting, for the moment, that the agents erred in not submitting copies of the affidavits to your Washington headquarters before turning them over to Atty. Morgenthau do you not think the transfer of these agents was rather drastic under the circumstances and that a reprimand and/or a warning would have sufficed?

The article further stated that Atty. Morgenthau's witnesses were shook up by the transfer of these agents and concluded that if Cohn could accomplish this through Nichols what chance has an ordinary citizen.

I recall Cohn as the mouthy punk whose brilliant (?) legal mind conceived the idea of tossing a monkey on to J. P. Morgan's lap during the then Senator McCarthy's investigations.

Why was Nichols allowed to barge into your office with any such demand and it has caused me to conjecture how I, a citizen who has been law abiding and hard working all my life, would fare if I attempted any such maneuver?

What caused Nichols, a known friend of Cohn, and who was beholden to Cohn for his $100,000 yearly salary with a distillery, to be so concerned and angry, were the agents getting too close to the truth about Cohn?

I trust Mr. Hoover, that you will see your way clear to reinstating these agents which will accomplish (1) the placing of the monkey on Cohn's arrogant back where it belongs and (2) have the effect of restoring confidence and trust in both you, Mr. Hoover and the Federal Bureau of Investigation.

I await with interest your version of the affair as I cannot believe it ever happened in an agency which, under your direction, has established an unblemished record for honesty, fairness and impartiality.

Very truly yours,

[redacted]

b7c [redacted]

COPY:nm

Sept. 3, 1969

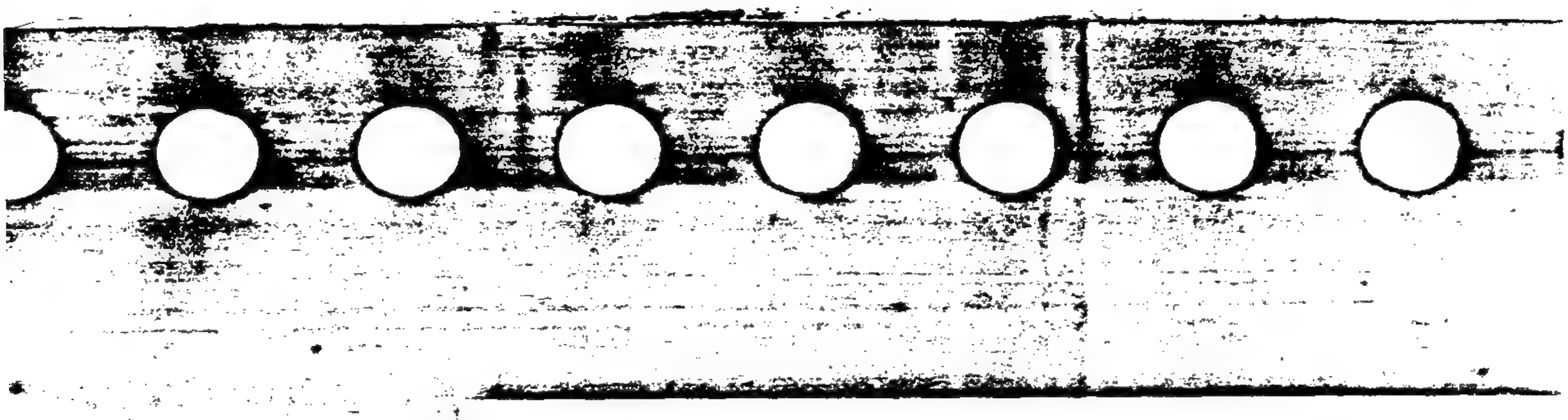
The Honorable J. Edgar Hoover,
Director of Federal Bureau of Investigation
Washington, D.C.

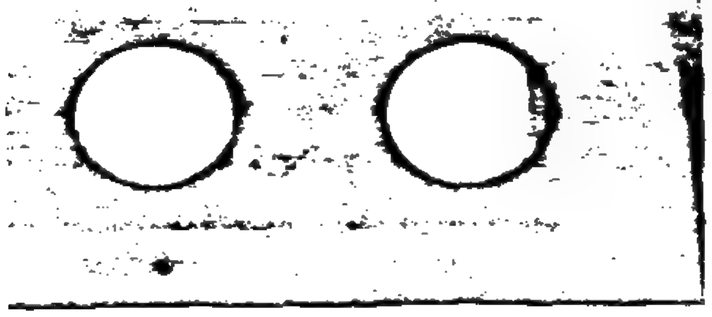
Sir:

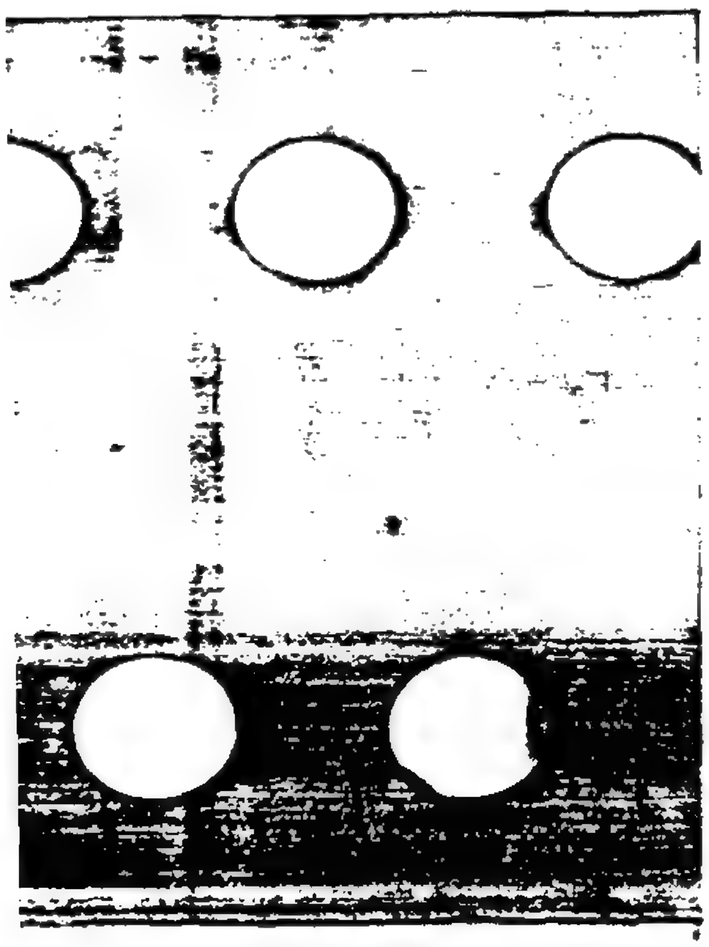
I have always been a great admirer of you personally and also for the honesty and integrity you have displayed in administering the affairs of the FBI. However, an article which appeared in our local paper which, in turn was quoting from an article in Life magazine has caused me to conjecture if my admiration has been misplaced.

The article states that one, Louis Nichols charged into your Washington headquarters demanding that three of your agents be censured because they had submitted affidavits to atty. Hogan the contradicting allegations made by Miles Pollard in regard to the Ray Cohen case.

The article goes on to state that subsequent to Nichols barging into your office you personally and unilaterally transferred these agents to other territories, denying, for the moment, that







~~Hoo~~ the agents erred in not submitting copies of the affidavits to your Washington headquarters before turning them over to Atty. Morgenthau do you not think the transfer of these agents was rather drastic under the circumstances and that a reprimand and/or a warning would have sufficed?

The article further stated that Atty. Morgenthau's witnesses were shook up by the transfer of these agents and concludes that if Cohn could accomplish this through Nichols what chance had an ordinary citizen.

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What causes Nichols a known friend of Cohn,

$100,000 yearly salary with a distillery, to be so concerned and angry, over the agents getting too close to the truth about Cuba?

I must in honor tell you that you will see your way clear to resigning these agents which will accomplish (1) the penury of the morale in Cuba's emergent hour when it belongs and (2) lose the effect of restoring confidence and trust in both you, Mr. Hoover and the Federal Bureau of Investigation.

I cannot well interest you version of the affair as I cannot believe it was happened as an agency wherein, under your direction, has established an unblemished record for honesty, fairness and impartiality.

Very truly yours,

[redacted]

bx

[redacted]

Background Information
Return to [redacted]-4716

September 16, 1969

REC-73 62-97564-98

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-10-84 BY [signature]

PERS. REC. UNIT

Honorable Abraham A. Ribicoff
United States Senate
Washington, D. C. 20510

EX-103

My dear Senator:

I have received your communication of September 12th enclosing a copy of a letter from [redacted]

I can unequivocally assure your constituent that the transfers of three Special Agents from our New York Office resulted solely from their failure to comply with long-standing rules and regulations of this Bureau and had nothing whatsoever to do with the merits of the Roy M. Cohn case. This matter, being handled by United States Attorney Robert M. Morgenthau, resulted from an investigation conducted by the Securities and Exchange Commission, not the FBI.

MAILED 7
SEP 16 1969
COMM-FBI

Sincerely yours,

J. Edgar Hoover

1 - New Haven - Enclosures (2)

NOTE: We have had previous cordial correspondence with Senator Ribicoff (D-Conn.). Bufiles contain no record identifiable with [redacted] Special Agents Jack D. Knox, Donald E. Jones and Russell S. Sullivan [redacted] and transferred from the New York Office on 5/2/69 for failure to notify New York Office and the Bureau concerning their execution of affidavits at the request of the U.S. Attorney's office. [redacted] Roy M. Cohn was indicted in November, 1968, and January, 1969, by Federal Grand Jury based on Securities and Exchange Commission investigation.

[redacted] (5)

MAIL ROOM TELETYPE UNIT

Bishop
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

5-4-69 8-1969

2 1970

Mr. Tolson
Mr. DeLoach
Mr. [illegible]
Mr. [illegible]
Mr. [illegible]
Mr. [illegible]
Mr. [illegible]
Mr. [illegible]
Mr. [illegible]
Mr. [illegible]
Mr. [illegible]
Tele. Room
Miss Holmes
Miss Gandy

7 SEP 15

62 SEP 15 1969

UNRECORDED COPY FILED IN

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-10-88 BY SP8 [illegible]

Plan Cairo

ENCLOSURE

[redacted] - (2)

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61 17564 98

SEP 15 1969

53

CORR[redacted]UNR

PER[redacted]

b7c

United States Senate

Washington, D. C., September 12 *1969*

Respectfully referred to

Congressional Liaison
Federal Bureau of
Investigation
Department of Justice
Washington, D.C.

I would appreciate receiving your comments on the portion of the attached letter which refers to the FBI.

Abe Ribicoff

Abe Ribicoff

U. S. GOVERNMENT PRINTING OFFICE 16—45109-2

[redacted]

b7c [redacted]

September 8, 1969

SEP 10 1969

Senator Abraham Ribicoff
Senate Office Building
Washington, D. C.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 6-10-87 BY [signature]

Dear Senator Ribicoff:

More and more of the American people are concerned about the problems of crime in the streets, violence and the increasing influence of the Mafia. We are all anxious to see the Congress of the United States as well as the President do something constructive to alleviate some of the problems this has caused.

At the same time, many citizens are increasingly upset about the fact that the problems of the law seem to apply differently to the rich as opposed to the not so rich. Last month we were treated to the spectacle of the distinguished Senator from Massachusetts going on T.V. and telling the American people an obviously contrived story about the events that led to the death of a young secretary of his which certainly involved at least a crime of leaving the scene of a fatal accident without reporting it to the police. Certainly any ordinary citizen would have had two months to two years in prison for such a crime but the distinguished Senator was allowed to go with just the slightest reprimand. This is particularly distressing to me because I had such great admiration for his brothers and in fact voted for our late president. Nonetheless, increasing number of citizens do feel that because he was rich and well-known the law applied to him differently than it would have applied to some other less rich individual. At the same time, we are again informed by the newspapers, if this is true, that the Director of the F.B.I. Mr. Hoover has transferred three agents from the New York office to less desirable posts rather summarily because they were involved in a case with Mr. Roy Cohen who happens to be a particular favorite of Mr. Hoover's. If this is true, again this is the powerful getting special privileges. I think the Senate ought to look into this and I would appreciate it if you have comments on it.

Sincerely yours,

[redacted]

b7c [redacted]

65-97564-98

ENCLOSURE

REC-89
62-97564-99

September 19, 1969

[redacted]

Dear [redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-11-88 BY [redacted]

Your communication to President Nixon has been referred to this Bureau and was received on September 17th.

With respect to your comments concerning the transfers of three Special Agents from our New York Office, I can unequivocally assure you that these transfers resulted solely from their failure to comply with long-standing rules and regulations of this Bureau and had nothing whatsoever to do with the merits of the Roy M. Cohn case. This matter, being handled by United States Attorney Robert M. Morgenthau, resulted from an investigation conducted by the Securities and Exchange Commission, not the FBI.

MAILED
SEP 19 1969
COMM-FBI

Sincerely yours,

J. Edgar Hoover

[redacted]

NOTE: Bufiles contain no record identifiable with correspondent. Special Agents Jack D. Knox, Donald E. Jones and Russell S Sullivan [redacted] transferred from the New York Office on 5-2-69 for failure to notify New York Office and the Bureau concerning their exe cution of affidavits at the request of the U. S. Attorney's office. [redacted]

Roy M. Cohn was indicted in November, 1968, and January, 1969, by Federal Grand Jury based on Securities and Exchange Commission investigation.

[redacted]

SEP 30 1969

Tele. Room
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

MAIL ROOM ☐ TELETYPE UNIT ☐

[redacted]

TRUE COPY

Sunday Sept 7

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-10-88 BY SP2 LTG/tal

The President

Dear Sir;

Enclosed is a portion of a recent article in Life magazine.

If there is a scintilla of truth in this particular item then those responsible for the treatment of these agents should be summarily fired.

The implications of this type of action for ordinary citizens willing to get involved in fighting crime & corruption are frightening.

Please advise me as to what you propose to do to correct the in justice to the agents involved and discipline those responsible for this action -

Respectfully

[redacted] b7C

1 6

FED. BU. OF INV.

Justice

The President

Enclosed is a portion of a recent article in Liberty Magazine. If there is a scintilla of truth in this publication either the Chief responsible for the treatment of these agents should be summarily fired. The implications of this

CORRESPONDENCE

do I commit this injustice
& the agents involved
and Discipline them responsible
for this action —

Respectfully

b7c

[redacted]

REC-89 EX-117

62-97564-10

September 18, 1969

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-10-88 BY [redacted]

Dear [redacted]

In reply to your letter which was received on September 15th, the article in "Life" magazine to which you refer is made up of lies and half-truths, and is typical of the hostile attitude this publication has displayed toward the FBI for years.

I can assure you that the transfers of three Special Agents from our New York Office resulted solely from their failure to comply with long-standing rules and regulations of this Bureau and had nothing whatsoever to do with the merits of the Roy M. Cohn case. This matter, being handled by United States Attorney Robert M. Morgenthau, resulted from an investigation conducted by the Securities and Exchange Commission, not the FBI.

Since I became Director of the FBI, I have directed its operations in a completely impartial manner as required of a Federal investigative agency. I will continue to do so as long as I hold this position.

MAILED 2
SEP 18 1969
COMM-FBI

Sincerely yours,
J. Edgar Hoover

1 - Buffalo - Enclosure

NOTE: Bufiles contain no record identifiable with correspondent. Special Agents Jack D. Knox, Donald E. Jones and Russell S. Sullivan were [redacted] transferred from the New York Office on 5-2-69 for failure to notify New York Office and the Bureau concerning [redacted]

NOTE CONTINUED PAGE TWO

Tolson
Delo
Mo
Bishop
Conrad
Felt
G
R
Tr
Gandy

MAIL ROOM ☑ TELETYPE UNIT ☐

b6
b7C

b6
b7C

NOTE continued: their execution of affidavits at the request of the U.S. Attorney's office. [redacted]

Roy M. Cohn was indicted in November, 1968, and January, 1969, by Federal Grand Jury based on Securities and Exchange Commission investigation.

OFFICE OF DIRECTOR
FEDERAL BUREAU OF INVESTI .TION
UNITED STATES DEPARTMENT OF JUSTICE

[redacted]

MR. TOLSON ✓
MR. DELOACH ✓
MR. MOHR
MR. BISHOP
MR. CASPER
MR. CALLAHAN
MR. CONRAD
MR. FELT
MR. GALE
MR. ROSEN ✓
MR. SULLIVAN
MR. TAVEL
MR. TROTTER
MR. JONES
TELE. ROOM
MISS HOLMES
MRS. METCALF
MISS GANDY

Mr. J Edgar Hoover
Director, F. B. I.
Washington, D. C

Dear Mr. Hoover

It was with dismay that I read the articles in the New York Times which referred to the Life article about you, the F. B. I agents and Mr. Roy Cohen, attorney of New York. I have looked without success for a reply to these charges in the daily press

I would like to know your view of this matter. Such press articles as these make pretty grim reading for citizens when confidence in federal agencies has been rather shaken.

Thank you for your cooperation.

Sincerely yours

[redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-10-88 BY SP2 [illegible]

b7C

[redacted]

Tolson
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Room
Gandy

Mr. J. Edgar Hoover
Director F.B.I.
Washington, D.C.

Dear Mr. Hoover

It was with dismay that I read the articles in the New York Times which refer to the Life article about you the F.B.I. agents and Mr. Ray Cohen, attorney of New York. I have looked without success for a reply to these charges in the daily press.

I would like to know your view of this matter. Such press tributes as these make pretty good reading for citizens whose confidence in federal agencies has been rather shaken.

Thank you for your cooperation

Sincerely yours

[redacted]

REC-84 62-97564-100

X. - 111

11 SEP 15 1969

[redacted]DENCE

ALL INFORMATION HEREIN IS UNCLASSIFIED DATE 5-10-88 BY SP4 [illegible]

SEP 15 1969

3/

b7C